(25,106)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 823.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

INDEX.

	Original.	Print
Citation and service (copy)	*a*	1
Caption	1	1
Order filing mandate of Supreme Court of the United States	2	2
Motion to file transcript of stenographer's notes of testimony and exhibits introduced at hearing held April 14, 1914, at Bowling Green, Ky., before examiner of Interstate Commerce Commission	2	2
Motion for an injunction *pendente lite*	3	2
Motion to set cause down for hearing	3	2
Order of submission	4	3
Decree	7	5
Opinion *per curiam*	9	6
Petition for appeal and allowance	29	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 28, 1916.

	Original.	Print
Assignment of errors	31	21
Order granting appeal	39	25
Præcipe for transcript of record, etc	40	25
Fourth section application No. 1952, filed in Commerce Court April 25, 1913	43	27
Petition in Commerce Court, filed October 7, 1912	150	95
Exhibit A—Map of L. & N. R. R. Co. system	166	111
B—Petition before Interstate Commerce Commission	167	112
C—Separate answer of L. & N. R. R. Co. before Interstate Commerce Commission	179	124
D—Transcript of hearings before Interstate Commerce Commission (not set out here)	186	130
E—Opinion and report of Interstate, Commerce Commission, etc.	186	131
F—Petition for rehearing	205	150
Supplemental petition, filed in Commerce Court November 11, 1912	217	161
Exhibit D—Transcript of hearings before Interstate Commerce Commission, filed in Commerce Court	244	177
Certificate of secretary, etc	247	179
Caption	247	179
Appearances	247	179
Proceedings	248	180
Testimony of W. C. Sumpter	252	184
Samuel Cristal	284	216
R. C. Duncan	293	225
B. G. Davidson	311	242
M. H. Crump	322	254
R. W. Smith	335	266
H. D. Graham	337	268
E. A. Greer	348	280
Charles E. Fulton	365	296
R. C. Duncan (recalled)	380	311
D. M. Goodwyn	381	312
B. G. Davidson	445	376
Complainant's Exhibit 1—Annual report of the Chief of Engineers, 1910 (extracts)	448	378
Defendants' Exhibit 1—Map	523	455
Exhibits Nos. 2 and 3—Statement	524	455
Deposition of E. W. Bewley	540	471
Certificate of secretary	564	495
Proceedings, April 29, 1912	565	496
Testimony of D. E. Goodwyn	574	505
E. K. Bryan, Jr.	589	520
Brief for defendants	594	525
L. & N. Exhibit 2—Statement showing present rates, etc., on classes 1 to F from Louisville to Nashville, etc	652	581

	Original.	Print
L. & N. Exhibit 3—Statement showing present rates on classes 1 to F from Louisville to Clarksville, etc.	653	582
L. & N. Exhibit 4—Statement showing lowest rate on classes 1 to F from Nashville and Louisville, etc.	654	583
L. & N. Exhibit 5—Scale of rates, Table A	655	584
L. & N. Exhibit 6—Statement showing distance and total of first six class rates from Louisville to L. & N. stations, etc.	657	586
L. & N. Exhibit 7—Chart showing rates, etc.	658	586
L. & N. Exhibit 8—Statement showing distance and total of present rates on certain commodities	660	588
L. & N. Exhibit 9—Chart showing rates, etc., on certain commodities	661	588
L. & N. Exhibit 10—Statement showing distances and total of present first six class rates from Nashville to L. & N. stations, etc.	663	590
L. & N. Exhibit 11—Chart showing rates from Nashville to L. & N. stations	664	590
L. & N. Exhibit 12—Statement showing distance and total of rates on certain commodities, etc.	666	592
L. & N. Exhibit 13—Chart showing rates on certain commodities	667	592
L. & N. Exhibit 14—Statement showing the relative haulage lost, etc.	668	593
L. & N. Exhibit 15—Affidavit of W. A. Colston.	670	594
Letter, Goodwyn to Gaddess, examiner, etc., May 7, 1912	672	596
Reporter's transcript of testimony of A. R. Smith, filed in Commerce Court April 29, 1913	677	601
Affidavit of C. B. Compton, filed in the Commerce Court April 25, 1913	693	615
Transcript of stenographer's notes, testimony, and exhibits in Bowling Green Business Men's Protective Association *vs.* Louisville & Nashville Railroad Company *et al.*, No. 4310, etc., filed in Commerce Court April 29, 1913	695	617
Certificate of secretary	695	617
Appearances	696	618
Proceedings	699	618
Testimony of F. E. Webster	702	621
W. T. Stevenson	732	639
M. S. Connelly	753	652
H. S. Funk	769	661
M. S. Connelly (recalled)	776	665
Exhibit 10—Diagram consisting of rate adjustment	780	667
Proceedings at meeting of committee of St. Louis-Ohio River lines, April 19, 1905	781	668

	Original.	Print
Exhibit A—List of commodities on which rate applicable from Chicago to Ohio River crossings on traffic, etc.	784	670
B—List of commodities on which rate applicable from Indianapolis to Ohio River crossings on traffic, etc.	787	673
Extract from stenographer's minutes of I. C. C. docket No. 6482.	790	675
Answer of Interstate Commerce Commission, filed in Commerce Court November 1, 1912	796	678
Answer of United States, filed in Commerce Court November 5, 1912	802	681
Answer of United States to supplemental petition, filed in Commerce Court November 20, 1912	806	684
Bond on appeal, filed January 17, 1916	808	685
Clerk's certificate	810	686

a

Citation.

Filed January 21, 1916.

UNITED STATES OF AMERICA,
Western District of Kentucky,
Sixth Judicial Circuit, ss:

To the United States of America and Interstate Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden in the City of Washington, District of Columbia, on the 15th day of February next, pursuant to a Petition for Appeal filed in the Clerk's office of the District Court of the United States for the Western District of Kentucky, wherein the Louisville & Nashville Railroad Company is Appellant and you are the Appellee, to show cause, if any there be, why the decree rendered against the Appellant, as in said Petition for Appeal, mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 17th day of January, in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States of America the one hundred and fortieth.

WALTER EVANS, *Judge.*

Service accepted this 20th day of January, 1916.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.

JOS. W. FOLK,
Chief Counsel Interstate Commerce Commission.

1 TRANSCRIPT OF RECORD.

Proceedings of the District Court of the United States, for the Western District of Kentucky, at Louisville, at a Regular Term, Begun and Held at the Federal Court Hall, in the City of Louisville, on Monday, the 8th Day of March, A. D. 1915.

Present: Honorable John W. Warrington, Judge of the United States Circuit Court of Appeals for the Sixth Circuit; Honorable Howard C. Hollister, Judge of the District Court of the United States for the Southern District of Ohio, and Honorable Walter Evans, Judge of the United States District Court for the Western District of Kentucky.

#18. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff,
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

Be it remembered, that heretofore, to-wit, on the 16th day of April, A. D. 1915, appeared the Plaintiff by counsel and tendered the Mandate of the Supreme Court of the United States in this cause and thereupon the following order was entered.

2 District Court of the United States, Western District of Kentucky.

#18.

LOUISVILLE & NASHVILLE RAILROAD CO.
vs.
UNITED STATES OF AMERICA and Others.

This day came the plaintiff, Louisville & Nashville Railroad Company, and tendered a certified copy of the mandate of the Supreme Court of the United States in this cause, the mandatory part whereof is as follows:

"Mr. Solicitor General Davis, of counsel for the appellees, having confessed error in open court, therefore, in pursuance of said confession it is now here ordered, adjudged and decreed by this Court that the decree of the said Commerce Court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is, hereby remanded to the District Court of the United States for the Western District of Kentucky for further proceedings."

And thereupon the Louisville & Nashville Railroad Company, by its Solicitor, William A. Colston, moved the Court, for reasons stated in a writing now filed, as follows:

"(1) For permission to file as evidence in this cause a certified copy of the transcript of the stenographer's notes of the testimony and of the exhibits introduced at a hearing held April 14, 1914, at Bowling Green, Kentucky, before Examiner Thurtell, of the Interstate Commerce Commission, in case No. 4310, Bowling Green Business Men's Protective Association of Bowling Green, Ken-
3 tucky, versus Louisville & Nashville Railroad Company, et al., and in those portions of Fourth Section Applications Numbers 1601 and 1604 filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in tariff No. A-42 of C. E. Fulton, Agent, which applications asked authority to continue proportional rates on classes and commodities from various points in the States of Illinois, Iowa, Indiana, Wisconsin, Michigan and Missouri, named

in the applications to various Ohio River Crossings, particularly New Albany, Indiana, applicable on business destined to Nashville, Tennessee, which are lower than the rates concurrently applicable on like traffic from same points of origin when destined to Bowling Green, Kentucky.

"(2) For an injunction pendente lite.

"(3) That the case be set down for hearing on this motion and for final hearing at such time as will enable due notice to be given to defendants herein."

And it is now ordered by this Court that the said motion and the action be set for hearing at Louisville, Kentucky, at 10 o'clock A. M. on Tuesday, the 27th day of April, 1915, of which notice, as required by law, should be given.

4 And on another day of said Term, to-wit on the 27th day of April, 1915, the following proceedings were had:

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

On this day this cause came on for hearing before the Honorable John W. Warrington, United States Circuit Judge, Sixth Judicial Circuit; the Honorable Walter Evans, United States District Judge, Western District of Kentucky, and the Honorable Howard C. Hollister, United States District Judge, Southern District of Ohio, who convened the United States District Court, Western District of Kentucky, in pursuance of the Statute in such case made and provided.

And thereupon came the parties, and each of them, by their respective counsel in open court, due notice having been given; and thereupon the plaintiff moved the Court for an injunction pendente lite, for a final decree annulling the order of the Interstate Commerce Commission, and for a permanent injunction against the same.

And thereupon on said hearing the plaintiff read:

(1) The petition and the Exhibits filed therewith, lettered respectively Exhibits "A," "B," "C," "E," and "F," and the Supplemental Petition.

5 (2) Transcripts of the hearings in I. C. C. Docket No. 4310, at Bowling Green, Kentucky, on November 27th and 28th, 1911, before Special Examiner G. P. Boyle, and at Bowling Green, Kentucky, on April 29th, 1912, before Special Examiner E. L. Gaddess, together with the Exhibits offered in said hearings, all certified by the Secretary of the Interstate Commerce Commission, the same having been printed and filed as Exhibit "D" with the petition.

(3) The testimony of A. R. Smith, taken before the United States Commerce Court, subject to the objection of counsel for the defendants.

(4) The affidavit of C. B. Compton, filed with the Commerce Court.

(5) A certified copy of the transcript of the stenographer's notes of the testimony and exhibits in Bowling Green Business Men's Protective Association vs. Louisville & Nashville Railroad Company, et al., I. C. C. No. 4310, April 14, 1914, and those portions of Fourth Section Applications Numbered 1601 and 1604, filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in Tariff No. A-42.

At the time the said testimony of the said A. R. Smith and the said affidavit of the said C. B. Compton, and the said certified copy of the stenographer's notes were offered to the Court, the counsel for the defendants, and each of them, objected to the reading thereof upon the following grounds:

First. That no part of the said matter was before the Interstate Commerce Commission in the record of the evidence and proceedings on which the order of the Commission was based.

Second. That one of the Exhibits in said record on said hearing of April 14th, 1914, consists of an excerpt from the testimony of one Lee Howell in another case before the Interstate Commerce Commission, between other parties, over another subject-matter, and the whole of said record in said other case before the Interstate Commerce Commission was not offered.

Third. The matters sworn to in the affidavit of the said C. B. Compton are conjectural, and the order of the Commission having been long in force and effect, the results from the operation thereof are within the possession of the plaintiff and should be produced.

Fourth. None of the said matter objected to relates to the power of the Interstate Commerce Commission, and all of the same is incompetent, irrelevant and immaterial.

6 And thereupon the counsel for the United States read the Answers of the United States, and the counsel for the Interstate Commerce Commission read the Answer of the Interstate Commerce Commission.

And thereupon the said motion, the said objections and the said cause were argued by counsel and submitted to the Court and taken under advisement.

Leave was granted to the plaintiff to file brief on or before May 12th, 1915, with leave to the defendants to file briefs on or before May 22nd, 1915, with leave to the plaintiff to file a reply brief on or before May 27th, 1915.

7 And on another day of said Term, to-wit, July 3rd, 1915, the following decree was entered herein.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Decree.

This cause having been heretofore, to-wit, on April 27th, 1915, heard before the Honorable John W. Warrington, United States Circuit Judge, Sixth Judicial Circuit; the Honorable Walter Evans, United States District Judge, Western District of Kentucky, and the Honorable Howard C. Hollister, United States District Judge, Southern District of Ohio, sitting in this court pursuant to the statute made and provided for the trial of cases such as this one, and the Court being now sufficiently advised, delivered its opinion in writing, which is ordered to be, and is now, filed as part of the record in this action;

And in accordance with the said opinion, it is now ordered, adjudged and decreed by the Court as follows, to-wit:

First. That the exceptions and objections of the defendants to the reading as evidence herein of the affidavit of C. B. Compton should be, and they are, sustained.

Second. That the exceptions and objections of the defendants to the reading as evidence of the certified copy of the transcript of the stenographer's notes of the testimony and exhibits taken in Bowling Green Business Men's Protective Association vs. Louisville & Nashville Railroad Company, et al., I. C. C. No. 4310, on April 14th,
1914, and those portions of Fourth Section Applications num-
8 bered 1601 and 1604, filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in Tariff No. A-42, should be, and they are, sustained.

Third. That the objections and exceptions of the defendants to the reading as evidence herein of the testimony of A. R. Smith, taken in this cause, should be, and they are, overruled.

Fourth. That the motion of the plaintiff for an injunction pendente lite restraining the defendants, and each of them, during the pendency of this action, from enforcing the orders of the Interstate Commerce Commission made on October 8th, 1912, so far as they are complained of in the plaintiff's supplemental petition filed in this cause, should be, and it is, denied and overruled.

Fifth. It is further ordered, adjudged and decreed by the Court that this action should be, and it is, dismissed, but without costs.

J. W. WARRINGTON,
Circuit Judge.
WALTER EVANS,
District Judge.
HOWARD C. HOLLISTER,
District Judge.

9 The Opinion referred to in the foregoing Decree is as follows:

In the United States District Court for the Western District of Kentucky.

No. 18.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Before Warrington, Circuit Judge; and Evans and Hollister, District Judges.

Opinion.

Per CURIAM:

The Louisville & Nashville Railroad Company, (which we shall call the plaintiff) on December 17th, 1910, in due form filed its "application before the Interstate Commerce Commission for relief under the long and short haul provisions of the 4th Section of the Act to regulate commerce." This application was numbered 1952. It had reference to the freight rates to be charged by the plaintiff throughout its entire system and might affect those charged throughout the southeastern part of the United States. It was of great length and elaboration and related to many hundred places. Its purpose was altogether proper, but inevitably it would take a very long time for the Interstate Commerce Commission (which we shall call the Commission) to complete its consideration of every phase of it, and, as some of the separate questions involved might be urgent and might be entirely disconnected from other phases of it, necessarily it would result that such separate matters might be investigated and settled before the consideration of others had begun. This would come from the nature of the application itself.

10 The record does not disclose, nor does it appear to be material, why that part of plaintiff's general application No. 1952, which related to long and short haul rates at Bowling Green, Ky., was taken up by the Commission so promptly, but an investigation into that feature of the application was, in fact, in progress, when, on August 8th, 1911, the Bowling Green Business Men's Protective Association (which we shall call the Protective Association) filed before the Commission its complaint (#4310) against the Louisville & Nashville Railroad Company and many other carriers, in which, after stating the rates fixed so far as they affected Bowling Green, Ky., averred that those rates were unjust and unreasonable and in violation of §1 of the Act to regulate commerce, and were unduly prejudicial to the interests of Bowling Green and unduly preferential to the interest of the citizens of Clarksville and Nashville, Tennessee, and Louisville, Ky., and in a majority of instances, were greater charges for a shorter distance than for a longer one.

The questions arising alike upon that phase of the plaintiff's application which involved rates at Bowling Green and upon the complaint of the Protective Association, were, to some extent, heard together, the parties consenting to the reading at both hearings of certain testimony taken on the plaintiff's application before the Protective Association had filed its complaint.

After hearing all parties upon the questions thus involved, the Commission returned its findings and decision, in which it dealt both with the application of the plaintiff and the complaint of the Protectve Association (see 24 I. C. C. Rep., 228), and thereupon entered certain orders made effective September 1, 1912, (later changed to October 15th) which are hereinafter set forth in the margin and which required the plaintiff to abstain and desist for a period of two years from charging, demanding, collecting or receiving any higher rates for the transportation of traffic from or to certain named points than is done from or to other cer-
11 tain points.

The plaintiff subsequently filed an elaborate petition for a re-hearing of these rulngs.

On October 8th, 1912, the Commission entered orders which, except as we have numbered them, are as follows:

"At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 8th day of October, A. D. 1912.

Fourth Section Order No. 1361.

In the Matter of That Portion of Application No. 1952 of the Louisville & Nashville Railroad Company, by A. R. Smith, Its Third Vice-President, for Itself and on Behalf of Its Connections, for Relief from the Provisions of the Fourth Section of the Act to Regulate Commerce, as Amended June 18, 1910, Respecting Class and Commodity Rates.

Class and Commodity Rates.

Upon further consideration of the record in the above entitled case:

1. It is ordered, That the order heretofore entered on June 4, 1912; in said case be, and the same is, hereby amended to read as follows:

2. This application, No. 1952, filed December 17, 1910, asks among other things, for authority to continue to charge lower rates to and from Louisville, Ky., Clarksville and Nashville, Tenn., than are concurrently in effect on like traffic to and from Bowling Green, Ky. A hearing having been held upon this application, in so far as it relates to rates on freight traffic to and from the points hereinbefore described, and full investigation of the matters and things involved therein having been had, and the Commission having, on the 4th day of June, 1912, made and filed a report containing its findings on fact and conclusions thereon, which said report is herein referred to and made a part hereof.

3. It is ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

4. It is further ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

12 5. It is further ordered, That the petitioners herein be, and they are hereby, authorized to continue to charge lower rates on sugar from New Orleans, La., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green provided that the present rates to Bowling Green are not exceeded.

6. The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any other provision of the Act."

On the same day in case No. 4310 of the Protective Association against the Railroad Company, the Commission overruled the Railroad Company's petition for a re-hearing, although it set aside its orders of June 4th.

On the day immediately preceding the entry of the latter orders the plaintiff, without awaiting the result of its petition for a rehearing, commenced this action in equity in the Commerce Court against the United States as respondent, and in which the Interstate Commerce Commission subsequently intervened, seeking to enjoin the enforcement of the Commission's orders of June 4th, 1912. On November 11th, 1912, the plaintiff filed a supplemental petition, showing that the orders of June 4th had been vacated; that its petition for a re-hearing had been overruled, and that the Commission had, on October 8th, made the orders in the fourth section application case which are copied above.

Subsequently, the Commerce Court (207 Fed., 591), holding that the orders entered by the Commission on October 8th, 1912, were not such as it could review, dismissed the action. Pending an appeal from that decision the Supreme Court, in the Intermountain Rate Cases, 234 U. S., 476, took a view of the question of jurisdiction different from that of the Commerce Court, and on March 1, 1915, upon the appellee's confessing the error, the Supreme Court reversed the decree in this case. Meantime, the existence of the Commerce Court having terminated, the case came to this court when the mandate of the Supreme Court was sent down to it in April, 1915.

13 The third and fourth of the orders of the Commission (as we have numbered them), made October 8th, 1912, denied to the plaintiff parts of the relief from the provisions of the long

and short haul clauses of Section 4 for which it had applied in respect to Bowling Green, Ky., though the fifth of said orders gave relief as to another part.

The complaint of the Protective Association, on the other hand, was largely based upon that portion of Section 3 of the Act to regulate commerce, which is in this language:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

This complaint made charges against the carrier and its rates, which, if sustained, would have led to a readjustment of those rates, and possibly other relief. But, while, on June 4th, the Commission made orders which might have brought about that result, they were set aside on October 8th, before they became effective, and so far at least as the record in this case shows (but see 31 I. C. C., 1), the matter has been at a standstill ever since. Certainly no decision which became effective upon the Protective Association's complaint was rendered, and no injury, in the legal sense, had come to the plaintiff by anything done upon the complaint of the Protective Association. Nevertheless, the plaintiff in its supplemental petition says:

"That as it appears from the record that the Commission was of the opinion that the findings and orders previously made by it and complained of in the original petition herein were improper, the Commissio- ought in justice and equity to have granted the petition for re-hearing in the said proceedings, which petition for re-hearing the Commission has denied, and that since it appears from the Commission's own action that the findings, conclusions, and orders of the Commission made upon the hearings had were er-
14 roneous and improper, sufficient reason was made to appear why the re-hearing asked should have been granted, and it was an abuse of discretion on the part of the Commission to refuse such re-hearing; and the orders made by the Commission on October 8th, 1912, as hereinabove set forth, which deny the said petition for re-hearing, and which deny in part relief under the Fourth Section of the Act to Regulate Commerce applied for, are orders made without the full hearing and investigation contemplated by the Act to Regulate Commerce, and are unlawful on that account."

In the same pleading the plaintiff further avers, as a foundation for the relief sought, that:

"The orders made and issued by the Interstate Commerce Commission on the 8th day of October, A. D. 1912, as hereinabove set forth, including the orders now complained of, were made and issued with the design and intent to accomplish the following purposes:

(*a*) To destroy the existing cause of action sought by petitioner to be enforced in this cause pending in this Honorable Court;

(*b*) To deprive this Honorable Court of all jurisdiction over this cause and the subject-matter thereof by so changing the form of the orders as to accomplish substantially the same results sought to be accomplished by the orders in the original petition herein complained of, and yet have it appear that the orders issued by the Commission are negative orders, or orders resting solely within the discretion of the Commission and not subject to review by this Honorable Court;

(*c*) To prevent all judicial investigation and determination of the reasonableness, fairness and validity of the orders now complained of."

These averments in the plaintiff's supplemental petition were specifically denied in the answer. Moreover, it was there averred that the orders of the Interstate Commerce Commission sought to be set aside and annulled, the report rendered in connection therewith and relating thereto, and the findings of fact in said report and order contained, were made upon due investigation and after a full hearing and upon substantial and sufficient evidence and due consideration thereof.

No direct testimony was offered in support of the charges made in the plaintiff's supplemental petition which we have copied, and it may suffice to say that the Court cannot indulge any presumption that they are well founded. It is true that some confusion
15 has been introduced into the case by the substitution of the orders of October 8th for those of June 4th. For example, counsel for plaintiff insist that the orders of October 8th are "third section orders made on a fourth section application." This insistence overlooks the fact that the case of the Protective Association—a third section case—and plaintiff's application—a fourth section case—were heard together; and that it was agreed by counsel that the evidence was, so far as applicable, to be considered in each of the cases. In determining that question the Court will be at liberty to examine the whole record and draw such conclusions therefrom as may be proper, but that is essentially different from saying that there is anything to warrant the conclusion that the Commission, in what it did, was actuated by any of the wrongful motives imputed to it in the plaintiff's supplemental petition.

Coming, then, to the consideration of the validity of the 3rd and 4th of the orders of October 8th, 1912, we are told by the counsel for the plaintiff in their brief that their main contentions are, that the two orders complained of should be annulled and their enforcement enjoined, first, "because the order complained of is not such a negative order, or order of denial, as the Commission had power to issue under the fourth section of the Act to regulate commerce;" and, second, "that even if the order complained of was and is a negative order or an order of denial, such as is contemplated by the fourth section of the Act to regulate commerce, the order is void because it

is contrary to the indisputable nature of the evidence and is not supported by any evidence."

In addition to the main contentions thus stated by the plaintiff's counsel, other reasons are urged, but they appear to be of a minor and subsidiary nature.

The fourth section of the Act in terms forbids a carrier subject to the provisions of the Act to charge or receive any greater
16 compensation in the aggregate for the transportation of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, etc., provided that, upon application to the Interstate Commerce Commission, the carrier may, in special cases after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of property. As we have seen, the plaintiff's application, No. 1952, was on its face one "for relief under long and short haul provisions of the fourth section of the Act to Regulate Commerce," and Paragraph 1 of the application begins with these words, "for authority to continue and establish rates for the transportation of freight between points hereinafter specified lower than rates concurrently in effect from or to or between intermediate points." Among the points included in the section of the application referred to is Bowling Green, Ky.

By its application No. 1952, so far as it is now under consideration, the plaintiff attempted to present a "special case" in which it should, in respect to Bowling Green, Ky., be authorized by the Commission, under Section 4 of the Act to charge less for a longer than for a shorter distance for the transportation of property. The effect of the 3rd and 4th of these orders is a denial of such authorization, which leaves the plaintiff no alternative but to obey that provision of Section 4 which forbids the charging of less for a longer than for a shorter distance. Or, to state it more in detail, the effect of these orders is (*a*) to deny plaintiff's application for authority to continue to charge less for a longer than a shorter distance on traffic going through Bowling Green, and which had come from or was going to Nashville, than it charges on like traffic which stops at, or which starts from Bowling Green; (*b*) and to also deny plaintiff's application for authority to continue to charge less for a longer than a shorter distance on oranges from Jacksonville, Fla., which
17 passed thru Bowling Green to Louisville than on like traffic which stopped at Bowling Green, but (*c*) to grant plaintiff authority to continue to charge lower rates on sugar from New Orleans, which passes through Bowling Green, than is charged on like traffic which stops there. That is to say, the Commission refused to relax the rule as to long and short haul charges prescribed in Section 4 in the first two instances, but consented to do so in the last. That the Commission had power to do all this after investigating plaintiff's application No. 1952, we do not doubt. And that it failed to act on other phases of the fourth section application No. 1952 cannot per se invalidate the orders actually made.

When the orders of October 8th analyzed above are compared with

those of June 4th (*copied in the margin), we see how much
18 the Commission changed its views. Plaintiff's petition for a rehearing, directed against the orders of June 4th, was, in form,

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*NOTE.—At a General Session of the Interstate Commerce Commission, Held at its Office in Washington, D. C., on the 4th day of June, A. D. 1912.

No. 4310.

BOWLING GREEN BUSINESS MEN PROTECTIVE ASSOCIATION, of Bowling Green, Ky.,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY and Others.

Fourth Section Application No. 1952.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

1. It is ordered, That the above-named defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving any higher rates for the transportation of traffic from New York, N. Y., and related points, to Bowling Green, Ky., than those contemporaneously maintained over their lines on the same traffic from the same points of origin to Nashville, Tenn., when such traffic passes through said Bowling Green.

2. It is further ordered, That said defendants, according as they participated in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter, to maintain and apply to the transportation of traffic from New York, N. Y., and related points, to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the same traffic from the same points of origin to Nashville, Tenn., when such traffic passes through said Bowling Green.

3. It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter, to abstain from charging, demanding, collecting, or receiving any higher rates for the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., than those contemporaneously maintained over their lines on the same commodity from said Jacksonville to Louisville, Ky.

4. It is further ordered, That said defendants, according as they

19 overruled, the- we cannot know precisely what the reasoning was which actuated the Commission in making the change, inasmuch as it made no statement on the subject, but we may fairly and reasonably conclude that while it denied the petition for a rehearing, it became convinced of some error or defect in its earlier orders and therefore changed or modified them to the later form. This is all the more apparent when we see that the orders of June 4th unquestionably were not made under Section 4 of the Act, but under other sections. It is, we think, fair to assume that the petition for a rehearing aided in producing results to that extent, whatever effect it may have had on the complaint of the Protective Association, which, apparently, was left undisposed of.

Whether or not the orders complained of are or are not negative in character or form, it must be regarded as the settled law of this case, that they may be reviewed by the Court and their enforcement enjoined if proper grounds therefor are made to appear. This results from the fact that when the case reached a trial in the Commerce Court the orders of June 4th, complained of in the plaintiff's original petition, had been eliminated by being rescinded by the Commission, thus leaving in contention only the orders of October 8th, complained of in the supplemental petition. The Commerce Court, holding that it had no jurisdiction to afford any relief as to them, dismissed plaintiff's petition, and plaintiff appealed to the Supreme Court. There, the appellees confessed error and the Supreme Court, accepting that confession, reversed the judgment of the Commerce Court. It is altogether useless to discuss whether the Supreme Court, under other circumstances, would have applied to the orders in ques-

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participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter, to maintain, and apply to the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the commodity from said Jacksonville to Louisville, Ky.

5. It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter, to abstain from charging, demanding, collecting or receiving any higher rates for the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala., than those contemporaneously maintained over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala.

6. And it is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter maintain, and apply to the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala., rates which shall not exceed those contemporaneously maintained over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala."

tion the rule as to jurisdiction announced in the Intermountain Rate Cases. We are bound to regard that rule as having already been applied by that court to this case.

As showing the settled general principles upon which cases
20 to enjoin the enforcement of the orders of the Interstate Commerce Commission proceed, a few of the authorities may be noted:

In the Intermountain Rate Cases, 234 U. S., at page 485, after alluding to the fact that the amendment of the Interstate Commerce Act of June, 1910, had taken from the carrier certain powers in respect to the long and short haul provision, and had transferred the same to the Interstate Commerce Commission, the Court said:

"But while the public power, so to speak, previously lodged in the carrier is thus withdrawn and reposed in the Commission, the right of carriers to seek and obtain under authorized circumstances the sanction of the Commission to charge a lower rate for a longer than for a shorter haul because of competition, or for other adequate reasons, is expressly preserved and if not, is in any event by necessary implication granted. And as a correlative, the authority of the Commission to grant on request the right sought is made by the statute to depend upon the facts established, and the judgment of that body in the exercise of a sound legal discretion as to whether the request should be granted compatibly with a due consideration of the private and public interests concerned and in view of the preference and discrimination clauses of the second and third section."

In Interstate Commerce Commission v. Union Pacific Railroad Co., 222 U. S., at page 547, it was said:

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or, (2) beyond its statutory power; or, (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscating and in violation of the Constitutional prohibition against taking property without due process of law; or, (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or, (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determine the validity of the exercise of the power. Int. Com. Com. v. Ill. Cent., 215 U. S., 452, 470; Southern Pacific v. Int. Com. Com., 219 U. S., 433; Int. Com. Com. v. Northern Pacific, 216 U. S. 538, 544; Int. Com. Com. v. Alabama Midland Ry. Co., 168 U. S., 144, 174."

And in United States v. Louis. & Nash. R. R. Co., 235 U. S. 321, the Court said that in cases like this that

21 "It must be determined whether the action of the Commission was repugnant to the Constitution, in excess of the

powers which that body possessed, or what is equivalent thereto, was wholly unsustained by proof."

Section 4 of the Act, as amended June 18th, 1910, reads:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance; Provided, however, That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: Provided, further, That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

When a carrier by railroad shall, in competition with a water route or routes, reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless, after hearing by the Interstate Commerce Commission, it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition."

It is thereby expressly made unlawful for the carrier to charge more for a shorter than for a longer distance. That is the general rule Congress deemed it wise to prescribe, but the Commission was empowered, after investigation, to relax the general rule by authorizing the carrier to charge less for longer than for shorter distances in special cases. This necessarily involves the exercise of judgment and discretion.

Bearing in mind the statement of plaintiff's counsel, that their "main contentions" are, 1st, that the orders of the Commission were not such as it had power to make; and, 2nd, that they were void because contrary to the indisputable nature of the evidence and
22 not supported by any evidence, it will be sufficient to say as to the first of these contentions that it is without merit, because the Commission, by the express terms of Section 4, had power to grant or deny the authorization for which the plaintiff applied. If, however, the orders complained of were contrary to the indisputable nature of the evidence, then the second of plaintiff's main

contentions is sound, and the orders made under such conditions being arbitrary and unjust, cannot be sustained, and plaintiff would be entitled to relief.

Although the briefs brought to our attention have been extremely voluminous, we confess some doubt as to what the plaintiff's counsel mean by the phrase "the indisputable nature of the evidence" as applicable to the record before us. As much of the evidence is of a nature that may be disputed, and as some of it certainly has been disputed, we suppose the phrase must be limited to such physical facts as pertain to the existence, the course and the characteristics of the Cumberland, Green and Barren Rivers, and the location upon one of Nashville, Tenn., and upon another of Bowling Green, Ky., and also to the physical facts that there are railroads other than plaintiff's operating at Nashville, though there is no other operating at Bowling Green. These incontestable facts appear, but, though most important, there is other evidence in the record to which the term "indisputable" is not applicable.

Coming, then, to the consideration of the evidence as a whole, we may premise several general observations:

1. The requirement of Section 4, that such authorization shall be made, if at all, "after investigation," clearly implies that the question shall be determined upon testimony, and after a hearing.

2. The "value of such evidence necessarily varies according to the circumstances, but the weight to be given it is peculiarly for the body experienced in such matters and familiar with the complexities, intricacies and history of rate-making in each section of the
23 country." I. C. C. v. Louis. & Nash. R. R., 227 U. S., 88; Louis. & Nash. R. R. v. United States, and I. C., opinion of Supreme Court delivered June 1, 1915.

3. It has been settled by repeated decisions of the Supreme Court that findings of fact by the Commission are always prima facie correct, and, in most instances, conclusively so. United States v. L. & N. R. R. Co., 235 U. S., 320; United States v. Louis. & Nash. R. R. Co., 236 U. S. 214

In considering the claims of counsel for the plaintiff, that there is no evidence to support the orders in dispute, it is to be borne in mind that the purpose of the application of plaintiff was to be relieved from the operation of the long and short haul clause of Section 4 of the statute. Such relief could be granted only upon a showing of facts which would constitute a special case within the meaning of the proviso of that section. This plainly cast upon the plaintiff the burden of proof; for the effect of granting the application would necessarily operate to create an exception to the express inhibition of the statute. As the Commission said in Railroad Commission of Nevada v. S. P. Co., 21 I. C. C., 329, 341:

"(3). That it must be affirmatively shown by the carriers seeking such exception that injustice will not be done to intermediate points by allowing lower rates at the more distant points.

(4). That the intendment of the law is to make its prohibition of the higher rate for the shorter haul a rule of well-nigh universal application from which this Commission may deviate only in special

cases, and then to meet transportation circumstances which are beyond the carriers' control; that is to say, a carrier shall not prefer the more distant point by giving it the lower rate because of any policy of its own initiation, but if at the more distant point it finds a condition to which it must conform under the imperious law of competition, if it would participate in traffic to that point, it may discriminate against the intermediate point wthout violating the law, provided it establishes such necessity before the Commission."

Examination of the record shows that substantial evidence was presented to the Commission upon all the issues involved.

24 The conditions prevailing at Bowling Green, as also those at Nashville and Clarksville, were elaborately described by witnesses called by the Protective Association of Bowling Green and the Railroad Company. The Railroad Company sought, for example, to show that the rates at Nashville were fixed by both rail and water competition; and that while the rail rates to and from Bowling Green were higher than those prevailing between Louisville and Nashville over the same road, and in either direction, the intermediate rates were reasonable and that *ni* evidence was offered to the contrary. This latter feature was met, however, by testimony and correspondence which tend to show that the Railroad Company controlled the Bowling Green river rates as well as its own rates.

Interstate Com. v. Louisville, &c. R. R., 190 U. S., 273-283.

Again, the competitive conditions, as claimed by the Railroad Company to exist at Nashville, were met by evidence tending to show that the rail competition at that point was negligible; that the competition afforded by the Cumberland River was potential rather than actual; and that the Barren and Green Rivers, if their navigation were not interfered with by the plaintiff, would furnish better and more continuous facilities for navigation than the Cumberland, and would place Bowling Green in substantially the same situation as that of either Nashville or Clarksville. The evidence was exhaustively considered in the report of the Commission, and it would serve no useful purpose to repeat what was shown there. It is sufficient to say that the evidence was conflicting, and that we should not be warranted in disturbing the conclusions of fact reached by the Commission.

It is not our province to weigh the evidence (L. & N. R. R. Co. vs. Behlmer, 175 U. S., 674, 675), or to do more than ascertain whether there was, in fact, substantial evidence heard and considered by the Commission, for if that were the case, its orders are beyond our control.

25 The fifth of the amendments to the Constitution of the United States covers the great and fundamental proposition that no person shall be deprived of life, liberty or property without due process of law, and one of the points made by the plaintiff's counsel in one of their briefs is thus expressed:

"The commission's order is broader than the fourth section hearings held in connection therewith, and, hence, deprives petitioner of its property without due process of law."

We cannot see that the constitutional provision referred to has a very acute bearing upon the case, nor recall that the proposition was pressed at the argument, but as an objection of the character indicated should always receive the Court's attention, we have analyzed plaintiff's pleadings to see upon what averments the contention is based.

In its supplemental petition, which covers the plaintiff's allegations against the two orders of October 8th, 1912, and limits this litigation to them, it is insisted that their enforcement will result in taking plaintiff's property without due process of law, in contravention of the Constitution of the United States, and more particularly in contravention of the Fifth Amendment thereto, and the pleading specifies, first, that this will result from the fact that those orders and the testimony upon which they were based was broader than plaintiff's fourth section application; second, that the Commission, by its course, unwarrantably and unlawfully attempted to deprive plaintiff of the right and opportunity for a judicial review of those orders; third, that they deprive the plaintiff of the right to have and enjoy its property without being deprived of it without due process of law; and, fourth, that the enforcement of the orders will result in a loss of revenue on business going from and coming to Bowling Green of at least $31,000.00 per annum.

While these general averments are made by plaintiff, there
26 are no specifications of the facts from which we could determine whether or not the rates which would be put in force as a result of the orders complained of would be such as to deprive the plaintiff of a fair return upon the money invested. In short, while a general complaint is made of deprivation of property without due process of law, no allegations are found in the pleading showing that the rates will be confiscatory if put in operation. In these essential respects there is no sufficient showing, and certainly none in detail, either in the pleading or in the testimony.

We have shown how the two orders of October 8th were, in our opinion, responsive to the plaintiff's fourth section application 1952. It is quite true that part of the testimony was heard by the Commission upon that application, and at the same time upon the Protective Association's complaint No. 4310, which was mainly based upon other sections of the Act, but this course was pursued for convenience and by consent of parties. While the testimony upon the Association's complaint and that upon plaintiff's application was probably all considered together, we cannot see nor say that the former unduly influenced the Commission in its decision upon the latter. Both cases, by common consent, were heard together, and what we have found is, that there was substantial testimony heard by the Commission upon plaintiff's fourth section application. If, literally, it be true that the testimony actually heard by the Commission was broader than plaintiff's fourth section application, that situation grew out of the consent referred to, though it does not follow because it was thus made broader that no substantial testimony was heard and considered which had relation to that application.

Nor, as already indicated, can we find any evidence which tends

to sustain plaintiff's contention, that the orders complained of resulted from any course pursued by the Commission in an attempt to deprive plaintiff of a right and opportunity for judicial review of those orders. The fact that we are now reviewing those
27 orders shows that even if the Commission had such purpose, it was futile and affords no basis for an injunction.

Only one other of the plaintiff's many contentions seems to require separate notice: It is that the order of the Commission is based exclusively upon the theory of estoppel. If we assume that the Commission has no power for that reason to decide a question coming before it, we nevertheless find nothing in the record nor in the Commission's opinion (24 I. C. C., 228) which shows plaintiff's assertion to be well founded. This contention must, therefore, be overruled. We must, upon all the considerations expressed, hold that the orders of the Commission made October 8th, 1912, are beyond the control of the Court because neither of those orders comes within the limits of our powers as settled by the decisions of the Supreme Court in the cases we have cited and many others.

At the final hearing of the case in this court the plaintiff offered to read as evidence, (1) the testimony of A. R. Smith, taken in this case at the hearing before the Commerce Court; (2), the affidavit of C. B. Compton, filed with the Commerce Court while the case was pending there, and (3) a certified copy of the stenographer's notes of certain testimony taken April 14th, 1914, in the Protective Association's case No. 4310, including certain parts of fourth section applications Nos. 1601 and 1604, filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in Tariff No. A-42.

This is an original suit in equity, and we would by no means be understood as holding generally that original evidence may not be received and heard to sustain averments made in the pleadings, but we see no reason to conclude that the affidavit of Compton, made without opportunity to cross-examine him, is admissible over the defendant's objection, in the absence, at least, of a showing that the testimony could not have been given by him as a witness in
28 open court at the trial where he could have been cross-examined, and especially as his deposition could have been taken on due notice. Nor can we discern any reason why testimony taken in another case (long after that case was separated from this one, if, indeed, it ever had any connection with this particular litigation) can be admissible in this case without the consent of defendants, in view of the fact that it was entirely possible for the persons who testified in the other case to be produced as witnesses here. These reasons apply, also, to plaintiff's offer to read as testimony parts of the two fourth section applications filed by Fulton, as agent for certain carriers.

We think it clear, therefore, that defendant's objections to these offers of testimony should be sustained.

The testimony of A. R. Smith was taken when the case was originally heard in the Commerce Court. Counsel for the defendants objected to it there, their principal reason therefor being that the Court had no power to hear the case at all. That view was finally

taken by the Commerce Court. Under these circumstances we think the defendant's objection to this testimony should be overruled, though what weight should be given to it upon the principal question involved is a very different proposition.

Our conclusions are, that the plaintiff's motion for a temporary injunction pendente lite should be overruled and denied, and that the bill should be dismissed. A decree accordingly will be entered.

July 3rd, 1915.

J. W. WARRINGTON,
Circuit Judge.
WALTER EVANS,
District Judge.
HOWARD C. HOLLISTER,
District Judge.

29 *Petition for Appeal.*

Filed August 20th, 1915.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

The above named plaintiff, Louisville & Nashville Railroad Company, conceiving itself aggrieved by the decree made (after notice and hearing as provided in an Act entitled "An Act Making Appropriations to Supply Urgent Deficiencies in Appropriations for the Fiscal Year 1913, and for other purposes, H. R. 1915, approved October 22, 1913,) on the 3rd day of July, A. D. 1915, in the above entitled cause and pursuant to the provisions of said Urgent Deficiency Act, approved October 22, 1913, relating to appeals to the Supreme Court of the United States from final judgments or decrees, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the Assignment of Errors, which is filed herewith, and prays that this appeal may be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said order and decree were so made, duly authenticated, may be sent to the Supreme Court of the United States.

HENRY L. STONE,
WM. A. NORTHCUTT,
NELSON W. PROCTOR,
WM. BURGER,
WM. A. COLSTON,
Solicitors for Plaintiff.

30 LOUISVILLE, KY., —— ——, 1915.

And now, to-wit, On Aug. 20th, 1915, it is ordered that the appeal be allowed as prayed for.

WALTER EVANS,
District Judge.

31 *Assignment of Errors.*

Filed August 20th, 1915.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

And now, on this, the 20th, day of August, A. D. 1915, comes the plaintiff, Louisville & Nashville Railroad Company, by its Solicitors, Henry L. Stone, Wm. A. Northcutt, Nelson W. Proctor, Wm. Burger and Wm. A. Colston, and says that the decree entered in the above cause on the 3rd day of July, A. D. 1915, is erroneous and unjust to plaintiff, and assigns for errors:

1. That the Court erred in denying and overruling plaintiff's motion for an injunction pendente lite.

2. That the Court erred in dismissing the action.

3. That the Court erred in sustaining defendants' exceptions and objections to the reading as evidence herein of the affidavit of C. B. Compton.

4. That the Court erred in sustaining the exceptions and objection of defendants to the reading as evidence herein of the
32 certified copy of the transcript of the stenographer's notes of the testimony and the exhibits taken in Bowling Green Business Men's Protective Association v. Louisville & Nashville Railroad Company, et al., I. C. C. No. 4310, on April 14, 1914, and those portions of Fourth Section Applications numbered 1601 and 1604, filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in Tariff No. A-42.

5. That the Court erred in holding that the Commission had power to make the orders which it made, and which are complained of.

6. That the Court erred in holding that the failure of the Commission to act on other phases of the Fourth Section Application No. 1952 did not per se invalidate the orders actually made.

7. That the Court erred in finding and holding that an investigation into that part of plaintiff's general Fourth Section Application No. 1952, which related to long and short haul rates at Bowling Green, Ky., was in progress when, on August 8th, 1911, the Bowling Green Business Men's Protective Association filed before the Commission its complaint (No. 4310), against the Louisville & Nashville Railroad Company and many other carriers, and that the parties consented to the reading at the hearing of the complaint of the Protective Association of testimony taken on the plaintiff's application, involving long and short haul rates at Bowling Green, before the Protective Association filed its complaint.

8. That the Court erred in holding that the third and fourth of the orders of the Commission (as the Court numbered them), made October 8th, 1912, denied to the plaintiff parts of the relief from

the provisions of the long and short haul clause of Section 4, for which it had applied in respect to Bowling Green, Ky.

33 9. That the Court erred in holding that no decision which became effective upon the Protective Association's complaint was rendered, and no injury had come to the plaintiff by anything done upon the complaint of the Protective Association.

10. That the Court erred in holding that none of the orders of June 4, 1912, were made under Section 4 of the Act to Regulate Commerce.

11. That the Court erred in holding that there was no direct testimony offered in support of the charges made in the plaintiff's supplemental petition, which are copied in the Court's opinion.

12. That the Court erred in holding that the evidence was conflicting.

13. That the Court erred in holding that the uncontradicted evidence, that the rates to and from Bowling Green were reasonable, was met by testimony and correspondence which tend to show that the Railroad Company controlled the Bowling Green river rates as well as its own rates.

14. That the Court erred in holding that the competitive conditions, as claimed by the Railroad Company to exist at Nashville, were met by evidence tending to show that the rail competition at that point was negligible; that the competition afforded by the Cumberland River was potential rather than actual; and that the Barren and Green Rivers, if their navigation were not interfered with by the plaintiff, would furnish better and more continuous facilities for navigation than the Cumberland River, and would place Bowling Green in substantially the same situation as that of

34 either Nashville or Clarksville.

15. That the Court erred in holding that there was no specification of facts to show that the enforcement of the orders complained of would result in taking plaintiff's property without due process of law.

16. That the Court erred in holding that the two orders of October 8th, complained of, were responsive to the plaintiff's fourth section application No. 1952.

17. That the Court erred in holding that the Fourth Section orders, complained of, were not broader than the hearing held in connection therewith.

18. That the Court erred in holding that it could not find any evidence which tends to sustain plaintiff's contention, that the orders complained of resulted from any course pursued by the Commission in an attempt to deprive plaintiff of right and opportunity for judicial review of the Commission's order.

19. That the Court erred in holding that there is nothing in the record, nor in the Commission's opinion, which shows that the Commission's order is based upon the theory of estoppel.

20. That the Court erred in holding that the orders of the Commission, made October 8th, 1912, are beyond the control of the Court.

21. That the Court erred in not granting the relief prayed for by plaintiff.

22. That the Court erred in not holding that the order complained of is not such a negative order or order of denial as is contemplated by the Fourth Section of the Act to Regulate Commerce.

35 23. That the Court erred in not holding that the order is not a negative order.

24. That the Court erred in not holding that the order is not responsive to plaintiff's Fourth Section Application No. 1952, but is responsive to the complaint of discrimination under the Third Section of the Act in Docket No. 4310.

25. That the Court erred in not holding that the effect of the order complained of is to require the reasonable rates to and from Bowling Green to be reduced and to increase the violation of the literal provisions of the long and short haul clause, and that these things the Commission is without power to effect.

26. That the Court erred in not holding that the Commission's order is broader than the Fourth Section hearings held in connection therewith, and, hence, deprives plaintiff of its property without due process of law.

27. That the Court erred in not holding that, even if the order complained of is a negative order, or an order of denial, such as is contemplated by the Fourth Section of the Act to Regulate Commerce, the order is void because it is contrary to the indisputable nature of the evidence, and is not supported by any evidence, and is arbitrary, and the Commission erred as a matter of law in making the order upon the evidence before it.

28. That the Court erred in not holding that the uncontroverted facts of record show that the difference in the circumstances and conditions affecting the transportation of property to, from and through Louisville, Ky., and Nashville, Tenn., as compared with the circumstances and conditions affecting the transportation of property to and from Bowling Green, Ky., are such as to justify

36 discrimination either under the Third Section or under the Fourth Section of the Act to Regulate Commerce.

29. That the Court erred in not holding that the rates to and from Bowling Green are not shown to be unjust or unreasonable in and of themselves, or otherwise in violation of Section One of the Act to Regulate Commerce, and the Commission in denying relief in respect to the Nashville rates, notwithstanding the intermediate Bowling Green rates are just and reasonable in and of themselves, exceeded the limitations fixed by law on the exercise of its powers under the Fourth Section.

30. That the Court erred in not holding that the acceptance by plaintiff of lower rates to and from Nashville than the rates in effect to and from intermediate points, including Bowling Green, was not and is not voluntary, but is the necessary result of actual compelling competition at Nashville.

31. That the Court erred in not holding that the lower rates to and from Nashville, than were in effect to and from Bowling Green,

were due to competition which is real, substantial and compelling, and the prefererence so arising or produced cannot be held in legal effect to be an undue or unjust prejudice under either the Fourth Section or any other section of the Act to Regulate Commerce, and the Commission's conclusion, that Nashville was given an undue preference and Bowling Green subjected to an unjust disadvantage, was not warranted or sustained by any evidence, and the Commission erred as a matter of law in this regard.

32. That the Court erred in not holding that the Commission's findings with respect to the force and effect of railroad competition at Nashville are contrary to the indisputable nature of the evidence.

37 33. That the Court erred in not holding that the uncontradicted testimony shows that water competition at Nashville was in the past, and still is, actual, active, and controlling upon the adjustment of rates to, from, and through that point, and that the Commission finds and reports this to be a fact, and that the relief prayed by plaintiff should therefore be granted.

34. That the Court erred in not holding that the Commission's findings, with respect to an alleged community of interest and control between the boat line and the railroad at Bowling Green, are not sustained by any evidence.

35. That the Court erred in not holding that, even if a control or community of interest between plaintiff and the Packet Company at Bowling Green did exist, such fact would not operate to render the acceptance by plaintiff of lower rates to Nashville than to Bowling Green, in order to meet competition at Nashville, an undue or unlawful preference to Nashville in violation of either the Third or the Fourth Sections of the Act to Regulate Commerce, and the Commission erred as a matter of law in holding that it does.

36. That the Court erred in not holding that the denial of relief in respect to rates on oranges from Jacksonville to Louisville was likewise unlawful.

37. That the Court erred in not holding that the order of the Commission is based upon the theory of estoppel, and that this theory the Commission is without power to consider or enforce.

38. That the Court erred in not holding that the enforcement of said orders will result in the taking of plaintiff's property without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.

38 Wherefore, the plaintiff prays that the said decree be reversed, and that the District Court be instructed to enter a decree permanently enjoining the enforcement of the orders of the Interstate Commerce Commission complained of.

HENRY L. STONE,
WM. A. NORTHCUTT,
NELSON W. PROCTOR,
WM. BURGER,
WM. A. COLSTON,
Solicitors for Plaintiff.

39 *Order Granting Appeal.*

Entered August 20th, 1915.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

This day appeared the complainant, Louisville & Nashville Railroad Company, by Henry L. Stone, William A. Northcutt, Nelson W. Proctor, William Burger and William A. Colston, its counsel, and tendered to the Court its Petition for Appeal and Assignment of Errors, and, upon consideration thereof, it is ordered that said Petition for Appeal and Assignment of Errors be filed and an appeal be, and it is hereby, allowed, to have reviewed in the Supreme Court of the United States the judgment and proceedings heretofore entered herein, upon giving bond according to law in the sum of Two hundred dollars, which bond shall not operate as a supersedeas.

40 *Præcipe.*

Filed August 20th, 1915.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Præcipe.

The Clerk will copy—

1. Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company before the Interstate Commerce Commission for relief under the Long and Short Haul provisions of the Fourth Section of the Act to Regulate Commerce, as amended, with respect to its freight traffic.

2. The petition and the Exhibits filed therewith, lettered respectively Exhibits "A," "B," "C," "E," and "F," and the supplemental petition.

3. The transcripts of the hearings in I. C. C. Docket No. 4310, and with reference to Fourth Section Application No. 1952, at Bowling Green, Kentucky, on November 27th, and 28th, 1911, before Special Examiner G. P. Boyle, and at Bowling Green, Kentucky, on April 29th, 1912, before Special Examiner E. L. Gaddess, together with the Exhibits offered in said hearings, all certified by the Secretary of the Interstate Commerce Commission, the same having been printed and filed as Exhibit "D" with the petition.

4. Reporter's transcript of testimony of A. R. Smith, Third Vice-

President of the Louisville & Nashville Railroad Company, before the United States Commerce Court at Washington, D. C., Friday, April 25, 1913, including remarks and questions of the Court and of counsel.

5. The affidavit of C. B. Compton, filed with the Commerce Court but omitting the purely formal parts, to-wit: the captions and the jurat.

6. The certified copy of the transcript of the stenographer's notes of the testimony and Exhibits in Bowling Green Business Men's Protective Association vs. Louisville & Nashville Railroad Company, et al., I. C. C. No. 4310, April 14, 1914, and those portions of
41 Fourth Section Applications numbered 1601 and 1604, filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in Tariff No. A-42.

7. The answers of the United States and the answer of the Interstate Commerce Commission.

8. The orders of submission in the District Court.

9. The opinion and decree, to-wit, of July 3, 1915, denying the motion for injunction pendente lite, and dismissing the action.

10. The petition for an appeal.

11. The order granting an appeal.

12. The Assignment of Errors.

13. And this præcipe.

Statement of Evidence to be Included in the Record on Appeal.

In addition to the evidence which appears in the pleadings, exhibits and orders of Court, set forth in the præcipe, the evidence will consist of,

1. The certified copy of the Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company before the Interstate Commerce Commission.

2. The transcripts of the hearings in I. C. C. Docket No. 4310, and with reference to Fourth Section Application No. 1952, at Bowling Green, Kentucky, on November 27th and 28th, 1911, before Special Examiner G. P. Boyle, and at Bowling Green, Kentucky, on April 29th, 1912, before Special Examiner E. L. Gaddess, together with the Exhibits offered in said hearings, all certified by the Secretary of the Interstate Commerce Commission, the same having been printed and filed as Exhibit "D" with the petition.

3. The reporter's transcript of the testimony of A. R. Smith, Third Vice-President of the Louisville & Nashville Railroad Company, before the United States Commerce Court at Washington, D. C., Friday, April 25, 1913, including remarks and questions of the Court and of counsel.

42 4. The affidavit of C. B. Compton, filed with the Commerce Court, subject to the exception of the defendants and the adverse ruling of the District Court.

5. The certified copy of the transcript of the stenographer's notes of the testimony and Exhibits in Bowling Green Business Men's Pro-

tective Association vs. Louisville & Nashville Railroad Company, et al., I. C. C. No. 4310, April 14, 1914, and those portions of Fourth Section Applications numbered 1601 and 1604, filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in Tariff No. A-42, subject to the exception of the defendants and the adverse ruling of the District Court.

HENRY L. STONE,
WM. A. NORTHCUTT,
NELSON W. PROCTOR,
WM. BURGER,
WM. A. COLSTON,
Solicitors for Plaintiff.

Service of copies of this præcipe, statement of evidence, of petition for appeal, and of Assignment of Errors is hereby acknowledged this 19th day of August, 1915.

E. MARVIN UNDERWOOD,
Ass't Att'y Gen., for the Attorney-General of the United States of America.

Service of copies of this præcipe, statement of evidence, of petition for appeal, and of Assignment of Errors is hereby acknowledged this 19th day of August, 1915.

CHAS. W. NEEDHAM,
Assistant Counsel for the Interstate Commerce Commission.

43 Fourth Section application No. 1952 of the Louisville & Nashville Railroad Company before the Interstate Commerce Commission, referred to in the foregoing præcipe and filed in the United States Commerce Court on April 25th, 1913, is as follows:

Before the Interstate Commerce Commission.

Application for Relief under the Long and Short Haul Provision of the Fourth Section of the Act to Regulate Commerce as Amended with Respect to Freight Traffic, Filed in Behalf of—

Louisville & Nashville Railroad Company,
Athens & Tellico Railway Company,
Brush Creek Railroad Company,
Carrollton & Worthville Railroad Company,
Cincinnati, Flemingsburg & Southeastern Railroad Company,
Hayneville & Montgomery Railroad Company,
Kentucky Highlands Railroad Company,
Lexington & Eastern Railway Company,
Louisville & Atlantic Railroad Company,
Manistee & Repton Railroad Company,
The Marbury & Kingston Railroad Company,
Marianna & Blountstown Railroad Company,
Pascagoula StreetRailway & Power Company,

Tennessee & Cumberland River Railroad Company,
Wasioto & Black Mountain Railroad Company.

44 Before the Interstate Commerce Commission.

Application for Relief under the Long and Short Haul Provision of the Fourth Section of the Act to Regulate Commerce as Amended with Respect to Freight Traffic, Filed in Behalf of—

Louisville & Nashville Railroad Company,
Athens & Tellico Railway Company,
Brush Creek Railroad Company,
Carrollton & Worthville Railroad Company,
Cincinnati, Flemingsburg & Southeastern Railroad Company,
Hayneville & Montgomery Railroad Company,
Kentucky Highlands Railroad Company,
Lexington & Eastern Railway Company,
Louisville & Atlantic Railroad Company,
Manistee & Repton Railroad Company,
The Marbury & Kingston Railroad Company,
Marianna & Blountstown Railroad Company,
Pascagoula Street Railway & Power Company,
Tennessee & Cumberland River Railroad Company,
Wasioto & Black Mountain Railroad Company.

The Louisville & Nashville Railroad Company, through A. R. Smith, its Third Vice-President;

The Athens & Tellico Railway Company, through A. R. Smith, its duly authorized Agent;

The Brush Creek Railroad Company, through A. R. Smith, its duly authorized Agent;

The Carrollton & Worthville Railroad Company, through A. R. Smith, its duly authorized Agent;

The Cincinnati, Flemingsburg & Southeastern Railroad Company, through A. R. Smith, its duly authorized Agent;

45 The Hayneville & Montgomery Railroad Company, through A. R. Smith, its duly authorized Agent;

The Kentucky Highlands Railroad Company, through A. R. Smith, its duly authorized Agent;

The Lexington & Eastern Railway Company, through A. R. Smith, its duly authorized Agent;

The Louisville & Atlantic Railroad Company, through A. R. Smith, its duly authorized Agent;

The Mainstee & Repton Railroad Company, through A. R. Smith, its duly authorized Agent;

The Marburry & Kingston Railroad Company, through A. R. Smith, its duly authorized Agent;

The Marianna & Blountstown Railroad Company, through A. R. Smith, its duly authorized Agent;

The Pascagoula Street Railway & Power Company, through A. R. Smith, its duly authorized Agent;

The Tennessee & Cumberland River Railroad Company, through A. R. Smith, its duly authorized Agent;

The Wasioto & Black Mountain Railroad Company, through A. R. Smith, its duly authorized Agent;

Each, for itself, and for carriers participating with it in the rates and traffic hereinafter referred to, petitions the Interstate Commerce Commission,—

I.

For authority to continue and to establish rates for the transportation of freight between points hereinafter specified lower than rates concurrently in effect from, to or between intermediate points—

Abernant, Ala., Acton, Ala., Acworth, Ga., Adairville, Ky., Aden, Ala., Alabama City, Ala., Allatoona, Ga., Altha, Fla., Altoona, Ala., Amru, Ky., Anchorage, Ky., Andalusia, Ala., Andrews, Ky., Anita, Ala., Anniston, Ala., Anthras, Tenn., Appalachia, Va., Arbor, Ky., Arcadia, Ala., Ardela, Ala., Arlo, Ala., Armona, Tenn., Ashley, Ill., Asphalt Junction, Ky., Athens, Tenn., Atkinson, Ky., Atlanta, Ga., Attalla, Ala., Aulon, Tenn., Avila, Ky., Avon, Ky., Athol, Ky.,

46 Banner, Ala., Bannister, Ga., Bardstown Junction, Ky., Bartow, Ga., Bay Minette, Ala., Bay St. Louis, Miss., Bear Creek, Tenn., Bear Spring, Tenn., Beattyville, Ky., Beattyville Junction, Ky., Beech Creek, Ky., Beech Creek Junction, Ky., Belle Ellen, Ala., Belle Point, Ky., Belleville, Ill., Benderman, Tenn., Bertha, Ky., Bessemer, Ala., Big Springs, Ala., Big Stone Gap, Va., Biloxi, Miss., Binghamton, Tenn., Birmingham, Ala., Black Creek, Ala., Blackwood, Va., Blacree, Ala., Blanche, Ky., Blocton, Ala., Blocton Junction, Ala., Bloomfield, Ky., Bloomfield Junction, Ky., Blountstown, Fla., Blowers, Ky., Blue Creek Junction, Ala., Bluff Springs, Fla., Bolton, Ga., Bondurant, Va., Boothton, Ala., Bosworth, Ky., Bowling Green, Ky., Boyles, Ala., Bradford, Ala., Brassfield, Ky., Brewton, Ala., Brickdale, Ky., Brodie, Ala., Brookwood, Ala., Brownsville, Tenn., Brundell, Tenn., Brundell Junction, Tenn., Brush Creek, Ky., Bryson Mountain, Tenn., Buell, Ala.,

Cadet, Ky., Cadle, Ala., Caffee Junction, Ala., Calera, Ala., Camden, Ala., Camden Junction, Ala., Cantonment, Fla., Capito, Ky., Carlisle, Tenn., Carmi, Ill., Carrollton, Ky., Cartersville, Ga., Caryton, Ky., Carryville, Fla., Caveland, Ky., Central City, Ky., Century, Tenn., Chamblee, Ala., Chef Menteur, La., Chetopa, Ala., Chipola, Fla., Christiansburg, Ky., Cincinnati, O., Circle City, Ky., Circle City Junction, Ky., Claiborne, Miss., Clairfield, Tenn., Clarksville, Tenn., Clay, Ky., Cleburne, Ga., Cliffside, Ky., Coiltown, Ky., Coleanor, Ala., Colta, Ala., Columbia, Tenn., Columbiana, Ala., Compton, Ala., Connellsville, Ala., Connellsville Junction, Ala., Conoly, Ala., Corbin, Ky., Cottondale, Fla., Couch, Tenn., Couch Junction, Tenn., Covert, Ky., Covington, Ky., Cow Creek, Ky., Cox, Fla., Crandall, Ga., Crestview, Fla., Crocker Junction, Ala., Cumberland City, Tenn., Cumberland Furnace, Tenn., Cumberland Gap, Tenn., Curvin's Mine, Ky., Cynthiana, Ky., Clay City, Ky., Coopers, Ala.,

Dantzlers, Miss., Danville, Tenn., Darbyville, Va., Dark's Mill, Tenn., Deans Siding, Ky., Decatur, Ala., Delsea, Tenn., Denmond, Ky., Dilley, Tenn., Dixiana, Ala., Dixiana Junction, Ala., Docray, Ala., Dolcito, Ala., Dolcito Junction, Ala., Dominion, Va., Dorchester Junction, Va., Dorothy, Ky., Dossett, Tenn., Dottelle, Ala., Dunbar, La., Duncans, Ill., Dunn, Ala., Durant, Ala., Durham, Fla., Duvall, Ala., Dundee, Ky.,

Eagan, Tenn., East Bernstadt, Ky., East St. Louis, Ill., Edgewood, Ky., Eldorado, Ill., Elizabeth, Ga., Elizabethtown, Ky.,
47 Elk, Ky., Elkton, Ky., Ellmitch, Ky., Elmore, Ala., El Vista, Ala., Elwood, Ky., Elys, Ky., Emerson, Ga., Enfield, Ill., Englewood, Tenn., Ensley, Ala., Erskine, Ala., Estes, Tenn., Estes Junction, Tenn., Estrada, Ky., Etowah, Tenn., Evanston, Ky., Evansville, Ind., Evelyn, Ky., Elkatawa, Ky.,

Falmouth, Ky., Faucette, Tenn., Fedora, Ala., Fern Lake, Ky., Ferro, Ala., Filson, Ky., Fincastle, Ky., Flemingsburg, Ky., Flomaton, Ala., Florala, Ala., Florence, Ala., Foley, Ala., Fonde, Ky., Ford, Ky., Fork Ridge, Tenn., Fork Ridge Junction, Tenn., Ft. Estill Junction, Ky., Fort Garrett, Ky., Foundry St., Ga., Four Mile, Ky., Frankfort, Ky., Franklin, Tenn., Frantz, Ky.,

Gadsden, Ala., Gallatin, Tenn., Gardeners, Ky., Garnsey, Ala., Gate City, Ala., Gatliff, Ky., Gautier, Miss., Geneva, Ala., Georgetown, Ky., Georgiana, Ala., Gilmore, Ga., Glasgow, Ky., Glasgow Junction, Ky., Glens Creek, Ky., Globe, Ala., Goethite, Ala., Gomez, Tenn., Gracey, Ky., Graces, Ala., Graceville, Fla., Grasselli, Ala., Grassy Mountain, Ga., Graves Mine, Ala., Gravity Yard, Ky., Graystone, Ala., Greenburg, Ky., Gulfport, Miss., Gurley, Ala., Gurley Junction, Ala., Gurnee, Ala., Gurnee Junction, Ala., Guthrie, Ky., Glencairn, Ky.,

Hansell, Ala., Hargrove, Ala., Harlow, Ky., Harrison, Ky., Hartranft, Tenn., Hartsville, Tenn., Hartsville Junction, Tenn., Haupt, Ky., Hayden House, Ky., Hayneville, Ala., Hecla, Ala., Heidelburg, Ky., Helena, Ala., Hematite, Tenn., Henderson, Ky., Henderson's Point, Miss., Hignite, Ky., Hogeland Junction, Ala., Holton, Tenn., Hopkinsville, Ky., Hugo, Ga., Humboldt, Tenn., Hunterton, Ky., Hyde, Tenn.,

Idamay, Ky., Ilford, Tenn., Iodio, Ala., Iron City, Tenn., Irvine, Ky., Indian Fields, Ky.

Jellico, Tenn., Jena, Tenn., Jenifer, Ala., Jett, Ky., Johnetta, Ky., Johnson, Ky., Junction B. B. & B. Ry., Ala., Junction City, Ky., Jackson, Ky.

Kamont, Va., K. C. Junction, Tenn., Keene, Ky., Kelos, Ky., Kennesaw, Ga., Kensee, Ky., Keswick, Ky., Khotan, Tenn., Kilsyth, Tenn., Kirschlers, Ala., Knoxville, Tenn.

La Follette, Tenn., Lagarde, Ala., Lagarde Junction, Ala., Lagos, Ky., La Grange, Ky., Lakeshore, Miss., Lakewood, Fla., Langley, Ala., Langley Junction, Ala., Latonia, Ky., Lavinia, Ky.,
48 Leba, Ala., Lebanon, Ky., Lebanon Junction, Ky., Leewood, W. Va., Left Fork Junction, Ky., Lehigh, Ala., Lekolo, Va., Leonards Siding, Fla., Lexington, Ky., Lily Mines, Ky., Linton, Ala., Livermore, Ky., Lockhart, Ala., Lock No. 13, Ky., Logana, Ky.,

Logmont, Ky., Long Beach, Miss., Lorena, Ky., Lot, Ky., Louise, Tenn., Louisville, Ky., Lufkin, Ala., Lyndale, Ky., L. & E. Junction, Ky.

McGhee, Tenn., McKenzie, Tenn., McLeansboro, Ill., McPhail, Ala., Mabel, Ala., Madisonville, Ky., Magella, Ala., Maloney, Ky., Maness Station, Va., Manistee, Ala., Manistee Junction, Ala., Manring, Tenn., Marble Creek, Ky., Marianna, Fla., Marietta, Ga., Martaban, Ala., Marvel, Ala., Maryville, Tenn., Masena, Ala., Mattawana, Ala., Maunie, Ill., Maxie, Ky., Maysville, Ky., Meadow Brook, Ky., Melcon, Ky., Memphis, Tenn., Memphis Junction, Ky., Mentor, Tenn., Middlesborough, Ky., Midway, Ky., Milan, Tenn., Millers Creek, Ky., Milligan, Fla., Million, Ky., Millville, Ky., Milneburg, La., Milton, Fla., Mingo, Tenn., Mississippi City, Miss., Moberley, Ky., Mobile, Ala., Monarch, Va., Montgomery, Ala., Montgomery Park, Tenn., Moragne, Ala., Morganfield, Ky., Morse, Ky., Moss Point, Miss., Mt. Vernon, Ill., Mt. Vernon, Ind., Mt. Vernon, Tenn., Munford, Ala., Murphy, N. C., Murphy Junction, Ga., Muscoda, Ala., Muscoda Junction, Ala., Muscogee, Fla., Myrtlewood, Ala., Marbury, Ala., Montrose, Ky., Mistletoe, Ky.

Napier, Tenn., Napier Junction, Tenn., Nashville, Ill., Nashville, Tenn., Nealton, Ky., Nevisdale, Ky., New Decatur, Ala., Newland, Ky., New Orleans, La., New Pittsburg Mine, Ky., Newport, Ky., New Vanderpool Mine, Ky., Nicholasville, Ky., Nicholasville Junction, Ky., Nicholson, Tenn., Nonaburg, Tenn., Noonday, Ga., North Ala. Junction, Ala., North Birmingham, Ala., North Jelico, Ky., Norton, Va., Nortonville, Ky., Netherland, Ky., Natural Bridge, Ky.

O'Connor Junction, Ala., O'Fallon, Ill., O'Fallon Junction, Ill., Oakdale, Fla., Ocean Springs, Miss., Olcott, Ky., Old Blounstown, Fla., Old Landing, Ky., Oliver Springs, Tenn., Olson, Ky., Orby, Ky., Ostend, Ky., Owensboro, Ky., Owen's Switch, Tenn., Oakdale, Ky., O. & K. Junction, Ky.

Packard, Ky., Palmers, Ala., Panola, Ky., Paris, Ky., Paris, Tenn., Paris Junction, Ky., Parry, Ky., Pascagoula, Miss., Paskert, Va., Pass Christian, Miss., Patterson, Ala., Paxton, Fla., Pennington, Va., Penascola, Fla., Phosphate, Tenn., Pinckard, Ky.,
49 Pine Barren, Fla., Pinkney, Tenn., Piper, Ala., Pittsburg, Ky., Pocket, Va., Pollard, Ala., Pond, Tenn., Ponza, Ky., Praco, Ala., Prattville, Ala., Prattville Junction, Ala., Princeton Junction, Tenn., Providence, Ky., Pruden, Tenn., Pryse, Ky.

Raimey, Tenn., Ramapo, Va., Reader's, Ala., Red Gap Junction, Ala., Reges, Ky., Reinecke Junction, Ky., Rice Station, Ky., Richmond, Ky., Ridgeland, Ala., Ridley, Tenn., Rigolets, La., Rilma, Ala., River Falls, Ala., River Junction, Fla., Rock Castle, Ala., Rock Creek, Fla., Rock Spring, Ala., Rogers, Tenn., Rogerton, Tenn., Rolumco, Ga., Roosevelt, Tenn., Rose Creek Junction, Ky., Rosewood, Ga., Roth, Ky., Rowland, Ky., Russells, Tenn., Russelville, Ky., Rosslyn, Ky.

St. Charles, Va., St. Louis, Mo., Sagamore, Ky., Samson, Ala., Satterfield, Tenn., Savage Creek, Ala., Savoy, Ky., Saxton, Ky., Sayre Mines, Ala., Schuler, Ala., Scottsville, Ky., Searcy, Ky., Searles,

Ala., Seelaus, Ky., Selma, Ala., Senegal, Tenn., Seymour, Ala., Shanklin, Ky., Shawneetown, Ill., Sheffield, Ala., Shelby, Ala., Shelby City, Ky., Shelbyville, Ky., Shiverville, Ala., Siglo, Tenn., Simsville, Fla., Sinks, Ky., Sink Creek, Fla., Skyhy, Ala., Smyrna, Ga., Snyder's Crossing, Ala., South Carrollton, Ky., South Memphis, Tenn., Spears, Ky., Spencers Quarry, Ala., Spotswood, Ky., Springfield, Ky., Spring Gap No. 1, Ala., Spring Gap No. 2, Ala., Stavix, Va., Steinman, Ala., Stockdale, Ala., Stone's Orchard, Tenn., Stony Fork, Ky., Stony Fork Junction, Ky., Stouts Mountain, Ala., Stouts Mountain Junction, Ala., Straight Creek, Ky., Stricklands, Ala., Summit, Tenn., Sunol, Ky., Surran, Ky., Swan Creek Junction, Tenn., Sylacauga, Ala., Shawanee, Ky., Stanton, Ky., St. Helens, Ky.

Tacoa, Ala., Tadcaster, Ky., Talladega, Ala., Taylorton, Ky., Tejay, Ky., Tekoa, Ala., Tellico Plains, Tenn., Tennessee Ridge, Tenn., Tennessee River, Tenn., Theodore, Ala., Thomas, Ala., Thompson's Siding, Miss., Toms, Tenn., Tom's Creek Mines, Ky., Trabue, Ky., Trolley Junction, Ky., Trumbo, Ky., Trussville, Ala., Turners Station, Va., Tuscumbia, Ala., Tyson, Ala., Torrent, Ky., Tallega, Ky.

Udora, Ala.

Valee, Va., Valley Creek, Ala., Valley View, Ky., Van Leer, Tenn., Vasper, Tenn., Versailles, Ky., Village Springs, Ala., Vine Hill, Tenn., Vinings, Ga., Vinita, Ala., Virginia, Ala., Virten, Tenn., Vulcan, Ala.

50 Wagers, Ky., Walton, Ky., Wamego, Ky., Waveland, Miss., Wellington, Ala., Wenrick, Ky., Westbourne, Tenn., West Irvine, Ky., Westville, Fla., Wetumpka, Ala., White Ash, Ky., Whitlock, Ky., Wilders, Ky., Willow Shoals, Ky., Wilmont, Ky., Wilson's Station, Tenn., Wilton, Ky., Wilton Junction, Ky., Winchester, Ky., Windrock, Tenn., Winetka, Ala., Winona, Ky., Wisdom, Tenn., Wisdom Junction, Tenn., Woodlawn, Ala., Woodlawn, Ill., Woodward, Ala., Worthville, Ky., Wyandotte, Ky.

Yingling, Ky., Yolande, Ala.

II.

For authority to charge and receive a less compensation in the aggregate for the transportation of like kind of property for a longer than for a shorter distance over the same line or route, in the same direction, the shorter being included within the longer distance, for traffic—

1. Originating at any of said points, destined to any of said points;

2. Originating at any of said points, passing by way of any one or more of said points, destined to points beyond;

3. Originating beyond any of said points, passing by way of any one or more of said points, destined to any of said points;

4. Originating at points beyond any of said points, passing between any two or more of said points, destined to points beyond any of said points; and

5. Passing between any of said points and intermediate points, the rates to or from which intermediate points are based on rates to

or from any of said points; or passing between intermediate points, the rates to or from one or both of which are based on rates to or from any one of said points or on local or mileage scales.

III.

For authority to continue the present practice of establishing rates to or from intermediate points based upon competitive or basing points, plus a local, differential or proportional charge
51 from or to said competitive or basing points to or from the said intermediate points, although said practice may result in the charging of a less rate to or from a more distant point than to or from an intermediate point, over the same line or route, in the same direction, the shorter being included within the longer distance.

IV.

For authority to continue to employ the principles, bases and adjustments upon which were constructed rates legally on file with the Interstate Commerce Commission, both as to traffic passing between points on its own rails and as to traffic passing between points one or both of which are not located upon petitioner's lines, but for which it and its participating connections compete.

V.

For all other and further relief to which the petitioner may be entitled.

VI.

Petitioner states that the number of rates upon and as to which it now prays relief, as aforesaid, is so great, and circumstances and conditions justifying the relief asked are so numerous and extensive, that it is not practicable to describe and justify each rate in detail and that each rate could not be so described and justified without burdening the Commission with a voluminous record of facts, circumstances and conditions of which petitioner believes the Commission has adequate knowledge.

VII.

Petitioner states that the different situations governed by different rate adjustments or competitive influences, which justify the relief prayed for, are so interwoven and interdependent that it is not practicable to make a separate application for each situation.

52 VIII.

Petitioner attaches hereto and makes a part hereof, a map, marked "Exhibit A", of the territory through which the lines of the Louisville & Nashville Railroad Company and its connections extend, on which map are indicated navigable rivers and other navigable waters;

certain competing lines of railroad; certain ports and certain markets of production, distribution and consumption; and another map, marked "Exhibit B" showing more prominently the railroad situation in the territory through which the lines of the Louisville & Nashville and its connections extend; and another map, marked "Exhibit C", upon which are indicated geographically the points set forth above as to which relief is prayed; and to which maps reference is made in connection with the statement of the reasons *relief* upon in support of this application.

IX.

As justifying its application, petitioner states that its existing rates, principles, bases and adjustments upon and as to which relief is prayed, have been established by force of competitive and other circumstances and conditions not within its control, and petitioner has adopted and used the said rates, principles, bases and adjustments of necessity and as an indispensable condition of participating in the transportation of the traffic covered thereby; that said traffic constitutes a considerable portion of its total traffic, and that without said traffic petitioner would not be able to earn a fair and just return on the value of its property devoted to public service; that while said rates are relatively low, to the best of petitioner's knowledge and belief, they invariably yield more than the added cost of moving the traffic involved, and thereby enable petitioner to handle its other traffic at lower rates than would otherwise be necessary to yield to petitioner a fair and reasonable return upon the value of its property devoted to public use; that its rates for the shorter hauls are
53 reasonably low per se and relatively in view of the conditions under which they have been established and are maintained; that the commercial and industrial affairs of the territory served by petitioner's lines of railroad have become adjusted and accustomed to the existing system of rates, and would be disrupted and demoralized by a literal observance of the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce; that the changing of the bases of the rates herein submitted to the Commission would serve no public end, but would inflict irrecoverable loss upon petitioner by depriving it of traffic which is both desirable and necessary to successful operation of its system of railroads; that the alternative of reducing all of its intermediate rates to the level of said Long Haul rates would serve no public end, because said intermediate rates are now reasonably low both as per se and relatively, and are not unjustly discriminatory, and are established and applied under dissimilar circumstances and conditions, and that such reduction would result in an irrecoverable loss of income necessary to maintain the character, extent and quality of the public service that petitioner is and will be expected and required to perform. Petitioner respectively states that all of the said rates upon and as to which relief is prayed have been established and maintained under circumstances and conditions which, for many years, have been generally accepted and approved by the Interstate

Commerce Commission, by courts of competent jurisdiction, by business communities, and by carriers generally, as justifying non-observance of the Long and Short Haul principle of the Fourth Section of the Act to Regulate Commerce. And among the reasons justifying the relief prayed for in this application are cited the following:

54 Competition, Active or Potential, of Controlling Force in Respect to Traffic, Important in Amount, with Carriers By Water, Which are Not Subject to the Provisions of the Act to Regulate Commerce.

The Report of the Commissioner of Corporations on Transportation by Water in the United States, issued by the Department of Commerce and Labor, (Washington: Government Printing Office, 1909) contains the following table of the number and mileage of navigable streams in the United States by Districts (part 1, page 28)

Streams.	Number of streams.	Navigable length (miles).
Tributary to the Atlantic Ocean	148	5,365
Tributary to the Gulf of Mexico exclusive of the Mississippi River and tributaries	53	5,212
Mississippi River and tributaries	54	13,912
Flowing into Canada	2	315
Tributary to the Pacific Ocean	38	1,606
Total	295	26,410

The navigable streams tributary to the Gulf of Mexico including the Mississippi and its tributaries, and those tributary to the Atlantic Ocean, comprising more than nine-tenths of the grand total of 26,410 miles reported by the Commissioner of Corporations, exert both actual and potential competive force throughout the territory in which petitioner's railroad lines are located.

The map submitted herewith as Exhibit A shows that the territory in which petitioner's lines are located is both surrounded and intersected by navigable waters; that the general course of the Ohio, Mississippi, Alabama, Tombigbee, Chattahoochee, Flint, Apalachicola, Ocmulgee, Altamaha and Savannah Rivers is north and

55 south, and therefore in the direction of the greatest traffic movement over the Louisville & Nashville Railroad Company's lines; and that the Cumberland, Tennessee, Green, Barren and Kentucky Rivers, running generally east and west between the Appalachian range and the Ohio and Mississippi Rivers, cross and intersect said lines at numerous places.

The lines of the Louisville & Nashville Railroad Company are in direct contact with the Ohio River at Cincinnati, Ohio, Maysville, Covington, Newport, Louisville, Owensboro and Henderson, Ky., Evansville and Mt. Vernon, Ind., and Shawneetown, Ill.; with the Mississippi at St. Louis, Mo., East St. Louis, Ill., Memphis, Tenn. and

New Orleans, La.; with the Tennessee River at Knoxville, Tenn., Decatur, Florence, Sheffield, Tuscumbia, Ala. and Danville, (Tennessee River Station) Tenn.; with the Cumberland River at Hartsville, Nashville and Clarksville, Tenn.; with the Kentucky River at Frankfort and Worthville, Ky.; with the Barren River at Bowling Green, Ky.; with the Green River at South Carrollton and Livermore, Ky.; with the Wabash River at Maunie, Ill.; with the Little Wabash at Carmi, Ill.; with the Coosa River at Wetumpka, and the Alabama at Montgomery, and Selma, Ala.; with the Tombigbee River near Myrtlewood, Ala.; with the Mobile River at Mobile, Ala.; with the Gulf of Mexico and with navigable streams at Pascagoula, Gautier, Ocean Springs, Biloxi, Mississippi City, Gulfport, Long Beach, Pass Christian, Henderson's Point, Bay St. Louis, Waveland, Lake Shore and Claiborne, Miss., Dunbar, Rigolets and Chef Menteur, La.; with Escambia Bay at Pensacola, Fla.; with the Black Water River at Milton, Fla.; with the Yellow River at Milligan, Fla.; with the Choctawhatchee at Westville and Caryville, Fla.; with the Chipola River at Marianna, Fla.; and with the Chattahoochee River at River Junction, Fla.; and with other less important streams at numerous other points.

The line of the Carrollton & Worthville Railroad Company runs from Worthville, Ky., on the Kentucky River, to Carrollton, Ky., at the confluence of the Kentucky and Ohio Rivers, and is paralleled for its entire distance by the navigable waters of the Kentucky River.

56 The line of the Kentucky Highlands Railroad Company extending from Cliffside Junction, (Frankfort) Ky., to Millville, Ky., is in close proximity to the navigable waters of Kentucky River and Glens Creek.

The line of the Lexington & Eastern Railway Company is in direct contact with Kentucky River at Beattyville Junction, St. Helens and Jackson, Ky., and practically parallels said river from Beattyville Junction to Jackson, a distance of 23 miles.

The line of the Louisville & Atlantic Railroad Company is in direct contact with Kentucky River at Marble Creek, Spears and Valley View, Ky., and is paralleled by that river from Irvin, Ky., to Beattyville Junction, Ky., a distance of 39 miles.

The line of the Manistee & Repton Railroad Company is in close proximity to the Alabama River near Manistee, Alabama.

The line of the Marianna & Blountstown Railroad Company is paralleled by Chipola River from Marianna, Fla., to Chipola, Fla., a distance of 19 miles, and is in direct contact with the Apalachicola River at Old Blountstown, Fla.

The line of the Tennessee & Cumberland River Railroad is in close proximity to Cumberland River near Bear Spring, Tenn.

Petitioner respectfully submits the following list of carriers now navigating the waters surrounding and intersecting the territory in question:

Alabama River—
Merchants Barge Line
Morrisette & Burke's Steamer City of Mobile
Henry Lindsey's Steamer America
Staples' Steamer Mary Staples.

Albemarle Sound—
Albemarle Steam Navigation Co.
Le Roy Steamboat Company

Apalachicola River—
Callahan Line
Merchants & Planters Steamboat Co.

57

Atlantic Ocean (Coastwise)—
American-Hawaiian Steamship Co.
Baltimore & Carolina Steamship Co.
Baltimore & Texas Steamship Co.
Brunswick & Florida Steamboat Co.
Clyde Line
Eastern Steamship Co.
Maine Coast Steamship Line
Mallory Steamship Co.
Martha's Vineyard, New Bedford & Nantucket Steamers
Merchants & Miners Transportation Co.
Metropolitan Steamship Co.
Morgan Line
Munson S/S Co.
New England Navigation Co.
New York & Baltimore Transportation Line
New York & Cuba Mail Steamship Co.
New York & Porto Rico Steamship Co.
Ocean Steamship Company of Savannah
Old Dominion Line
Panama Railroad Steamship Line
Pan-American Route
Peninsular & Occidental Steamship Co.
Philadelphia & Gulf S. S. Co.
Plant Line
Portland Line
Quebec Steamship Co.
Red "D" Line
St. John, Boston & Cuba Steamship Co.
Southern Pacific Steamship Lines
Southern Steamship Company
United Fruit Co. Steamship Lines
United Steamship Co.
Ward Line Route

Barren River—
Evansville & Bowling Green Packet Co.

Chattahoochee River—
Merchants & Planters Steamboat Co.

Chesapeake Bay—
Baltimore & Carolina Steamship Co.
Baltimore & Philadelphia Steamboat Co.
Baltimore & Texas Steamship Co.
Baltimore, Chesapeake & Atlantic Steamer Lines

58

Chesapeake Bay (Continued)—
Baltimore Steam Packet Co.
Chesapeake Line
Merchants & Miners Transportation Co.
New York & Baltimore Transportation Line
Norfolk & Washington Steamboat Co.
Potomac & Chesapeake Steamboat Co.
Virginia Navigation Co.
York River Line

Chester River—
Maryland, Delaware & Virginia Ry. and Steamer Routes.

Chipola River—
Merchants & Planters Steamboat Co.

Choptank River—
Baltimore, Chesapeake & Atlantic Steamer Lines

Chowan River—
Albemarle Steam Navigation Co.

Connecticut River—
Hartford & New York Transportation Co.

Cumberland River—
Burnside & Burkeville Transportation Co.
Cumberland River Steamboat Co.
Ryman Line
St. Louis & Tennessee River Packet Co.

Delaware River—
Baltimore & Philadelphia Steamboat Co.
Delaware River Transportation Co.
Ericsson Line
Philadelphia & Gulf S. S. Co.
Southern Steamship Co.
Wilmington Steamboat Co.

Flint River—
Merchants & Planters Steamboat Co.

Great Kanawha Rivers—
Greene Line Steamers.

Green River—

Evansville & Bowling Green Packet Co.

59

Hudson River—

Albany Day Line
Catskill & New York Steamboat Co.
Catskill Evening Line
Hudson River (Continued)
Citizens Line
Hudson Navigation Co.
Hudson River Day Line
Manhattan Navigation Co.
Mary Powell Steamboat Co.
New York & Hudson Steamboat Co.
People's Evening Line

James River—

Old Dominion Line
Virginia Navigation Co.

Manatee River—

Favorite Line
St. Petersburg Transportation Co.

Mexico Gulf—

American-Hawaiian Steamship Co.
Atlantic & Mexican Gulf Steamship Co.
Baltimore & Texas Steamship Co.
Bluefields Steamship Co.
Mallory Steamship Co.
Mobile & Gulf S. S. Co.
Morgan Line Steamers
Munson Steamship Line
New York & Porto Rico S. S. Co.
Peninsular & Occidental Steamship Co.
Pensacola, St. Andrews & Gulf S. S. Co.
Philadelphia & Gulf S. S. Co.
Southern Pacific S. S. Line
United Fruit Co. Steamship Lines
United Steamship Co.
Ward Line Route
Wolvin Line

Mississippi River—

Cumberland River Steamboat Co.
Diamond Jo Line Steamers
Lee Line United States Mail Steamers
Mississippi, Yazoo & Sunflower River Transportation Co.
Natchez & Bayou Sara Packet Co.

60

Mississippi River (Continued)—

Ryman Line
St. Louis & Tennessee River Packet Co.
Tennessee River Navigation Co.

Mobile Bay—

Pensacola, St. Andrews & Gulf S. S. Co.

Nanticoke River—

Baltimore, Chesapeake & Atlantic Steamer Lines

Occohannock River—

Baltimore, Chesapeake & Atlantic Steamer Lines

Ocklawaha River—

Ocklawaha & St. Johns Navigation Co. (Hart Line)

Ohio River—

Cumberland River Steamboat Co.
Greene Line Steamers
Lee Line United States Mail Steamers
Louisville & Cincinnati Packet Co.
Ryman Line
St. Louis & Tennessee River Packet Co.
Southern Ry. & Navigation Co.

Patuxent River—

Maryland, Delaware & Virginia Ry. & Steamer Routes

Plankatank River—

Baltimore, Chesapeake & Atlantic Steamer Lines

Pocomoke Sound & Pocomoke River—

Baltimore, Chesapeake & Atlantic Steamer Lines

Potomac River—

Norfolk & Washington Steamboat Co.
Maryland, Delaware & Virginia Ry. & Steamer Routes
Potomac & Chesapeake Steamboat Co.

Rappahannock River—

Maryland, Delaware & Virginia Ry. & Steamer Routes

Roanoke River—

Le Roy Steamboat Co.

St. Francis River—

Lee Line United States Mail Steamers

61

St. John's River—
Clyde's St. John River Line
DeBarry Line
Favorite Line
Inter-Ocean Steamboat Co.
Ocklawaha & St. Johns Navigation Co.
St. Petersburg Transportation Co.

Sunflower River—
Mississippi, Yazoo & Sunflower River Transportation Co.

Tampa Bay—
Favorite Line
Peninsular & Occidental Steamship Co.
St. Petersburg Transportation Co.

Tennessee River—
St. Louis & Tennessee River Packet Co.
Southern Ry. & Navigation Co.
Tennessee River Navigation Co.

Thames River—
Norwich & New York Propeller Co. (Chelsea Line)

Waccamaw River—
Waccamaw Line

Wicomico River—
Baltimore, Chesapeake & Atlantic Steamer Lines

Yazoo River—
Mississippi, Yazoo & Sunflower River Transportation Co.

York River—
Chesapeake Steamship Co. (York River Line)

Petitioner respectfully further submits that in addition to the active water carriers embraced in the foregoing list, tramp steamers, schooners and sailing vessels are always obtainable on short notice, for single cargo coastwise movement, at all of the Atlantic and Gulf Ports; and that on all of the inland navigable streams, irregular service can always be had upon short notice, upon assurance of cargo, inasmuch as any of the regular lines will operate extra steamers and barges, and private interests, operating transportation facili-
62 ties, will perform outside service whenever there is a demand for it.

The above factors exert not only a direct influence but a potential effect as well, in depressing the measure of the individual and joint or through rates of petitioner and its connecting carriers; and petitioner therefore respectfully submits that the relief prayed for in this

connection is made necessary by both active and potential competition with water carriers, not subject to the provisions of the Act.

63 Competition of Controlling Force, in Respect to Traffic, Important in Amount, with Foreign or Domestic Railroads, which, as to Such Traffic, Are not Subject to the Provisions of the Act to Regulate Commerce.

All traffic moving via the L. & N. R. R. from Maryville, Dossett, Oliver Springs, Coal Creek, Vasper, LaFollette, Pruden, Rogerton, Clairfield, Dilley, Eagan, Anthras, Hyde, Holton and Jellico, Tenn., to Nashville and Clarksville, Tenn., and in the reverse direction, is interstate, because it goes out of the State of Tennessee in transit; yet the Southern Railway and its connections, viz: the Cincinnati, New Orleans & Texas Pacific and Tennessee Central Railroads, handle said traffic entirely within the State of Tennessee and therefore as to such traffic are not subject to the Act.

All traffic moving via the L. & N. R. R. from Cumberland Gap and Jellico, Tenn., to LaFollette, Vasper, Coal Creek, Dossett, Oliver Springs, Knoxville and Maryville, Tenn., and in the reverse direction, is interstate, because it goes out of the State of Tennessee in transit, whereas the Southern Railway handles the same traffic entirely with- the State of Tennessee.

All traffic moving via the L. & N. and Athens & Tellico roads from Cumberland Gap and Jellico, Tenn., to Athens, Tenn., and in the reverse direction, is interstate, because it goes out of the State of Tennessee in transit, whereas the Southern Railway handles such traffic entirely within the State of Tennessee.

All traffic from Cumberland Gap, Jellico, Pruden, Rogerton, Clairfield, Dilley, Eagan, Anthras, Hyde, Holton, LaFollette, Chaska, Coal Creek, Dossett, Oliver Springs, Knoxville and Maryville, Tenn., moving via the L. & N. and N. C. & St. L. roads to Chattanooga, Tenn., and in the reverse direction, is interstate, be-
64 cause it must be transported by way of Cartersville, Ga., whereas the Southern Railway handles such traffic entirely within the State of Tennessee.

All traffic moving via the Athens & Tellico and L. & N. roads from Athens, Tenn., to Chattanooga, Tenn., and in the reverse direction, is interstate, because it moves by way of Cartersville, Ga., whereas the Southern Railway handles such traffic entirely within the State of Tennessee.

All traffic moving from Nashville and Columbia, Tenn., via the L. & N. R. R., to Paris, McKenzie, Pond and Memphis, Tenn., is interstate, because it is transported by way of Guthrie, Ky., whereas the N. C. & St. L. Railway transports such traffic entirely within the State of Tennessee.

All traffic moving via the L. & N. R. R. between Nashville, Tenn., and Clarksville, Tenn., is interstate, because it is transported via Guthrie, Ky., whereas such traffic is handled by the Tennessee Central Railroad entirely within the State of Tennessee.

All traffic moving via the L. & N. R. R. between Louisville, Ky., and Gracey, Ky., is interstate, because it is transported by way of Princeton Junction, Tenn., whereas the same traffic is handled via the Illinois Central Railroad entirely within the State of Kentucky.

All traffic moving between Louisville, Ky., and Cadiz, Ky., via the L. & N. and Cadiz roads, is interstate, because it moves by way of Princeton Junction, Tenn., whereas the Illinois Central and Cadiz roads handle such traffic entirely within the State of Kentucky.

All traffic moving between Louisville, Ky., and Murray, Dexter, Glade, Benton, Elva and Paducah, Ky., via the L. & N. and N. C. & St. L. roads, is interstate, because it moved by way of Paris, Tenn., whereas the Illinois Central, in connection with the N. C. & St. L. Railway, handles such traffic entirely within the State of Kentucky.

All traffic moving via the L. & N. R. R. from Mobile, Selma, Montgomery, Prattville, Calera, Columbiana, Shelby, Sylacauga, Talladega, Jenifer, Anniston, Wellington, Gadsden, Attalla,
65 Birmingham, Bessemer, Andalusia, Florala, Ensley, Boyles, Trussville, Thomas and Blocton, to Florence, Sheffield and Tuscumbia, Ala., and in the reverse direction, is interstate, because it moves via Columbia, Tenn., whereas such traffic is handled via the Southern Railway and its connections entirely within the State of Alabama.

Traffic moving via L. & N. R. R. from Montgomery, Selma, Prattville, Calera, Columbiana, Shelby, Sylacauga, Talladega, Jenifer, Anniston, Wellington, Gadsden, Attalla, Alabama City, Birmingham, Bessemer, Ensley, Decatur, Florence, Sheffield and Tuscumbia, to Pensacola, Fla., Gulfport, Miss., and New Orleans, La., and in the reverse direction, is interstate commerce, but may be transported to and from the port of Mobile by the M. & O., Southern and other carriers and their connections as Alabama intrastate traffic, and as separate shipments between Mobile and Pensacola, Gulfport and New Orleans by water carriers; and as to such traffic so handled none of said carriers would be subject to the Act.

The above instances relate to points in the immediate territory of the L. & N. R. R. Co.

In addition, the competition both actual and potential of the Mexican lines in connection with water carriers not subject to the Act, has a strong influence in the adjustment of rates on transcontinental traffic to, from and via points on petitioner's lines; and it is also true that the competition of the Mexican railroads, in connection with water lines not subject to the Act, exerts a strong influence upon the adjustment of rates upon traffic for which petitioner competes between points in the United States and points in the Republic of Mexico.

66 Competition of Controlling Force, in Respect to Traffic Important in Amount, Between Carriers or Routes which are Subject to the Statute, in Consequence of which a Strict Application of the General Rule of the Statute Would be Destructive of Legitimate Competition and Deprive the Petitioner of the Use of Its Property.

The Louisville & Nashville Railroad is in competition at 368 points of contact with 69 other carriers engaged in interstate commerce and therefore subject to the Act, as follows:

Alabama Great Southern R. R.:

Alabama City, Ala.	Boyles, Ala.	Woodward, Ala.
Attala, Ala.	Ensley, Ala.	Spencer Quarry, Ala.
Bessemer, Ala.	Gate City, Ala.	Blocton Junction, Ala.
Birmingham, Ala.	Grasselli, Ala.	Gadsden, Ala.
Blocton, Ala.	Trussville, Ala.	

Atlanta, Birmigham & Atlantic R. R.:

Atlanta, Ga.	Talladega, Ala.	Pelham, Ala.
Stockdale, Ala.	Birmingham, Ala.	Bessemer, Ala.

Atlanta & St. Andrews Bay Ry.:

Cottondale, Fla.

Atlanta & West Point R. R.:

Atlanta, Ga.

Atlantic Coast Line R. R.:

Montgomery, Ala. River Junction, Fla.

Appalachicola Northern R. R.:

River Junction, Fla.

Baltimore & Ohio Southwestern R. R.:

Cincinnati, O.	Junction, Ill.	St. Louis, Mo.
O'Fallon, Ill.	East St. Louis, Ill.	Shawneetown, Ill.
Enfield, Ill.	Louisville, Ky.	

67 Birmingham & Atlantic R. R.:

Talladega, Ala.

Central of Georgia Railway:

Andalusia, Ala.	Gate City, Ala.	Samson, Ala.
Atlanta, Ga.	Lockhart, Ala.	Sylacauga, Ala.
Birmingham, Ala.	Wodlawn, Ala.	Montgomery, Ala.
Florala, Ala.	Paxton, Fla.	Lakewood, Fla.

Chattanooga, Southern R. R.:

Gadsden, Ala.

Chesapeake & Ohio Railway:

Cincinnati, O. Louisville, Ky. Winchester, Ky.
Covington, Ky. Maysville, Ky.
Lexington, Ky. Newport, Ky.

Chesapeake & Ohio of Indiana.

Cincinnati, O.

Chicago & Alton R. R.:

East St. Louis, Ill. St. Louis, Mo.

Chicago & Eastern Illinois R. R.:

East St. Louis, Ill. Mt. Vernon, Ill. St. Louis, Mo.

Chicago, Burlington & Quincy Railway:

East St. Louis, Ill. St. Louis, Mo. Woodlawn, Ill.

Chicago, Indianapolis & Louisville Ry.:

Louisville, Ky.

Chicago, Peoria & St. Louis Railway:

East St. Louis, Ill. St. Louis, Mo.

Chicago, Rock Island & Pacific Ry.:

St. Louis, Mo. Memphis, Tenn.

Cincinnati, Georgetown & Portsmouth R. R.:

Cincinnati, O.

Cincinnati, Hamilton & Dayton Ry.:

Cincinnati, O.

Cincinnati, Lebanon & Northern R. R.:

Cincinnati, O.

68 Cincinnati & Westwood R. R.:

Cincinnati, O.

Cincinnati, New Orleans & Texas Pacific Ry.:

Cincinnati, O. Lexington, Ky. Georgetown, Ky.
Junction City, Ky. Walton, Ky. Nicholasville, Ky.

Cincinnati Northern R. R.:

Cincinnati, O.

Cleveland, Cincinnati, Chicago & St. Louis Railway:

Carmi, Ill.
Cincinnati, O.
East St. Louis, Ill.
Eldorado, Ill.
Louisville, Ky.
St. Louis, Mo.

Erie Railroad:

Cincinnati, O.

Evansville & Indianapolis R. R.:

Evansville, Ind.

Evansville & Terre Haute R. R.:

Evansville, Ind.
Mt. Vernon, Ind.

Frisco System:

Bessemer, Ala.
Birmingham, Ala.
Ensley, Ala.
Memphis, Tenn.
St. Louis, Mo.
Thomas, Ala.
Woodward, Ala.

Georgia R. R.:

Atlanta, Ga.

Gulf & Ship Island R. R.:

Gulfport, Miss.

Illinois Central R. R.:

Ashley, Ill.
Belleville, Ill.
Birmingham, Ala.
Central City, Ky.
Clay, Ky.
East St. Louis, Ill.
Eldorado, Ill.
Elizabethtown, Ky.
Evansville, Ind.
Gracey, Ky.
Henderson, Ky.
Ensley, Ala.
Hopkinsville, Ky.
Louisville, Ky.
Memphis, Tenn.
Milan, Tenn.
Morganfield, Ky.
New Orleans, La.
Nortonville, Ky.
Owensboro, Ky.
St. Louis, Mo.
Bessemer, Ala.
Providence, Ky.

Illinois Southern R. R.:

Nashville, Ill.

Interstate R. R.:

Appalachia, Va.
Blackwood, Va.
Norton, Va.
Dorchester Junction, Va.

69 Kentucky Midland R. R.:

Central City, Ky.

Lexington & Eastern Ry.:

Lexington, Ky.
Winchester, Ky.
Beattyville, Junction, Ky.

Louisiana Railway & Navigation Co.:

New Orleans, La.

Litchfield & Madison R. R.:

East St. Louis, Ill.

Louisiana Southern Ry.:

New Orleans, La.

Louisville, Henderson & St. Louis Ry.:

Evansville, Ind.
Henderson, Ky.
Louisville, Ky.
Owensboro, Ky.
Ellmitch, Ky.

Missouri, Kansas & Texas Ry.:

St. Louis, Mo.

Missouri Pacific Ry.:

St. Louis, Mo.

Mobile & Ohio R. R.:

Blocton, Ala.
East St. Louis, Ill.
Humboldt, Tenn.
Mobile, Ala.
Montgomery, Ala.
Prattville, Ala.
St. Louis, Mo.
Theodore, Ala.

Morgan's Louisiana & Texas R. R. & S. S. Co.:

New Orleans, La.

Nashville, Chattanooga & St. Louis Railway:

Alabama, City, Ala.
Atlanta, Ga.
Attalla, Ala.
Aulon, Tenn.
Cartersville, Ga.
Columbia, Tenn.
Elizabethtown, Ga.
Gadsden, Ala.
Marietta, Ga.
McKenzie, Tenn.
Memphis, Tenn.
Moragne, Ala.
Nashville, Tenn.
Paris, Tenn.
Pond, Tenn
Enerson, Ga.
Bartow, Ga.
Allatoona, Ga.
Hugo, Ga.
Acworth, Ga.
Kennesaw, Ga.
Noonday, Ga.
Roosewood, Ga.
Smyrna, Ga.
Vinings, Ga.
Gilmore, Ga.
Bolton, Ga.
Cleburne, Ga.
Leewood, Tenn.
Binghamton, Tenn.
Montgomery Park, Tenn.
K. C. Junction, Tenn.
South Memphis, Tenn.

70 New Orleans, Ft. Jackson & Grand Isle R. R.:

New Orleans, La.

New Orleans, Mobile & Chicago R. R.:

Mobile, Ala.

New Orleans & Northeastern R. R.:

New Orleans, La.

New Orleans Great Northern R. R.:

New Orleans, La.

New Orleans Terminal Co.:

New Orleans, La. Pontchartrain Junction, Ala.

New Orleans, Texas & Mexico R. R.:

New Orleans, La.

Norfolk & Western Railway:

Cincinnati, O. Norton, Va.

Pascagoula Northern R. R.:

Pascagoula, Miss

Pensacola, Alabama & Tennessee R. R.:

Muscogee, Fla. Pensacola, Fla.

Pittsburgh, Cincinnati, Chicago & St. Louis Ry.:

Cincinnati, O. Louisville, Ky.

St. Louis, Iron Mountain & Southern Ry.:

East St. Louis, Ill. Memphis, Tenn. St. Louis, Mo.

St. Louis Southwestern Ry.:

East St. Louis, Ill. Memphis, Tenn. St. Louis, Mo.

St. Louis, Troy & Eastern R. R.:

East St. Louis, Ill.

Seaboard Air Line Ry.:

Akes, Ga.
Angel, Ga.
Aragon, Ga.
Atlanta, Ga.
Birmingham, Ala.
Borden, Ala.
Cartersville, Ga.
Cedartown, Ga.
Davittes, Ga.
Deatons, Ga.
Easom, Ga.
Fish, Ga.
Ladds, Ga.
Montgomery, Ala.
Palestine, Ala.
Piedmont, Ala.
River Junction, Fla.
Rockmart, Ga.
Stilesboro, Ga.
Taylorsville, Ga.
Tredegar, Ala.
Vigo, Ala.
Wellington, Ala.
Zuni, Ala.

71 Southern Railway:

Aden, Ala.
Alabama City, Ala.
Anita, Ala.
Anniston, Ala.
Ardela, Ala.
Atlanta, Ga.
Attalla, Ala.
Belle Ellen, Ala.
Belleville, Ill.
Bessemer, Ala.
Birmingham, Ala.
Blocton, Ala.
Boothton, Ala.
Cadie, Ala.
Calera, Ala.
Coal Creek, Tenn.
Coleanor, Ala.
Columbiana, Ala.
Cumberland Gap, Tenn.
Decatur, Ala.
Dossett, Tenn.
East St. Louis, Ill.
Ensley, Ala.
Evansville, Ind.
Florence, Ala.
Gadsden, Ala.
Garnsey, Ala.
Gate City, Ala.
Gurnee, Ala.
Gurnee Junction, Ala.
Hansell, Ala.
Hargrove, Ala.
Georgetown, Ky.
Hyde, Tenn.
Jellico, Tenn.
Jenifer, Ala.
Knoxville, Tenn.
La Follette, Tenn.
Lexington, Ky.

Louisville, Ky.
Marvel, Ala.
Masena, Ala.
Memphis, Tenn.
Middlesboro, Ky.
Midway, Ky.
Mobile, Ala.
Mt. Vernon, Ill.
Murphy, N. C.
North Birmingham, Ala.
Oliver Springs, Tenn.
Piper, Ala.
St. Louis, Mo.
Seymour, Ala.
Sheffield, Ala.
Shelbyville, Ky.
Talladega, Ala.
Thomas, Ala.
Tuscumbia, Ala.
Vasper, Tenn.
Woodlawn, Ala.
Woodward, Ala.
Versailles, Ky.
Anthras, Tenn.
Eagan, Tenn.
Dilley, Tenn.
Rogerton, Tenn.
Pruden, Tenn.
Fonde, Ky.
Marlow, Tenn.
Maryville, Tenn.
Tadcaster, Ky.
Cadet, Ky.
Fern Lake, Ky.
Lagos, Ky.
Stony Fork Juct., Ky.
Brickdale, Ky.
Gravity Yard, Ky.
Winona, Ky.
Bosworth, Ky.
Nicholason, Tenn.
Gomez, Tenn.
Fork Ridge, Tenn.
Fork Ridge Jct., Tenn.
Mingo, Tenn.
Harttranft, Tenn.
Senegal, Tenn.
Bryson Mountain, Tenn
Owens Switch, Tenn
Selma, Ala.
Maneing, Tenn.
Olson, Ky.
Arbor, Ky.
Edgewood, Ky.
Hignite, Ky.
Kelos, Ky.
Roth, Ky.
Wilmont, Ky.
Capito, Ky.
Marlow, Ky.
Logmont, Ky.
Stony Fork, Ky.
Sagamore, Ky.
Elwood, Ky.
Delsea, Ky.
Covert, Ky.
Kirschlers, Ala.
Stricklands, Ala.
Big Springs, Ala.
Junction B. B. & B. Ry., Ala.
Savage Creek, Ala.

Tennessee Central Railroad:

Clarksville, Tenn. Nashville, Tenn. Vine Hill, Tenn.

72 Texas & Pacific Ry.

New Orleans, La.

Toledo, St. Louis & Western R. R.:

East St. Louis, Ill. St. Louis, Mo.

Vandalia R. R.:

East St. Louis, Ill. St. Louis, Mo.

Virginia & Southwestern Ry.:

Appalachia, Va.
Big Stone Gap, Va.
Pocket, Va.
Stavix, Va.
Maness Station, Va.
St. Charles, Va.
Turner's Station, Va
Ramapo, Va.
Darbyville, Va.
Paskert, Va.
Lekola, Va.
Kamont, Va.
Dominion, Va.
Valee, Va.
Bondurant, Va.
Monarch, Va.

Wabash R. R.:

East St. Louis, Ill. St. Louis, Mo.

Wabash, Chester & Western R. R.:

Mt. Vernon, Ill.

Western Ry. of Alabama:

Montgomery, Ala. Selma, Ala.

Yazoo & Mississippi Valley R. R.:

Memphis, Tenn. New Orleans, La.

The Athens & Tellico Railway Company is in competition at two points of contact with two other carriers engaged in interstate commerce and therefore subject to the Act, as follows:

Louisville & Nashville R. R.:

Englewood, Tenn.

Southern Railway:

Athens, Tenn.

The Louisville & Atlantic Railroad Company is in competition at four points of contact with four other carriers engaged in interstate commerce and therefore subject to the Act, as follows:

73 Cincinnati, New Orleans & Texas Pacific Ry.:

Nicholasville, Ky.

Louisville & Nashville Railroad:

Richmond, Ky.

Lexington & Eastern Ry.:

Beattyville Junction, Ky.

Southern Railway:

Versailles, Ky.

The Lexington & Eastern Railway Company is in competition at four points of contact with eight other carriers engaged in interstate commerce and therefore subject to the Act, as follows:

Chesapeake & Ohio Railway:

Lexington, Ky.
L. & E. Junction, Ky.
Winchester, Ky.

Cincinnati, New Orleans & Texas Pacific Ry.:

Lexington, Ky.

Louisville & Nashville R. R.:

Lexington, Ky.
Winchester, Ky.

Louisville & Atlantic R. R.:

Beattyville Junction, Ky.

Southern Railway:

Lexington, Ky.

In addition to the above, the Louisville & Nashville Railroad Company and its connections, forming through routes, are also in the keenest and most active competition with other carriers and routes for traffic between a very large number of other points.

The strivings and efforts of the various carriers and routes, including petitioner individually and in conjunction with its connecting lines, to secure through traffic passing between the points in question, have necessitated, and will in the future necessitate, a continual readjustment of rates; and the relief herein sought is necessary to enable petitioner to continue to compete for said traffic.

The distance via the L. & N. R. R. between Cincinnati, O., and New Orleans, La., is 919 miles; the distance via the Queen & Crescent Route, composed of the C., N. O. & T. P., A. G. S., and
74 N. O. & N. E. roads, is 836 miles, or 83 miles less than via L. & N.

The distance via L. & N. between Louisvile, Ky., and New Orleans

The distance via L. & N. between St. Louis, Mo., and New Orleans, La., is 949 miles; via Illinois Central 718, or 231 miles less.

The distance via L. & N. between St. Louis, Mo., and Mobile, Ala., is 810 miles; via M. & O. 647, or 163 miles less.

The distance via L. & N. between Cincinnati, O. and Birmingham, Ala., is 504 miles; via the C. N. O. & T. P. and A. G. S. roads 481, or 23 miles less.

The distance via L. & N. between Lexington, Ky., and Birmingham, Ala., is 479 miles; via C. N. O. & T. P. and A. G. S. 399, or 80 miles less.

The distance via L. & N. and N. C. & St. L. between Cincinnati, O., and Chattanooga, Tenn., is 448 miles; via C. N. O. & T. P. 338; or 110 miles less.

The distance via L. & N. and L. H. & St. L. between Louisville, Ky., and St. Louis, Mo. is 324 miles; via Southern Railway 274, or 50 miles less.

The distance via L. & N. between New Orleans, La., and Selma, Ala. is 310 miles; via N. O. & N. E., A. G. S., and Southern 307, or 3 miles less.

The distance via L. & N. between Atlanta, Ga., and Birmingham, Ala., is 212 miles; via Southern Railway 168 miles, or 44 miles less.

The distance via L. & N. between Cincinnati, O., and Lexington, Ky., is 99 miles; via the C. N. O. & T. P. 82 miles, or 17 miles less.

The distance via L. & N. between Birmingham, Ala., and New Orleans, La., is 415 miles; via N. O. & N. E. and A. G. S. 365 miles, or 60 miles less.

The distance via L. & N. between Cincinnati, O., and Maysville, Ky., is 130 miles; via the Chesapeake & Ohio Railway 63 miles, or 67 miles less.

The distance via L. & N. R. R. between Memphis, Tenn.,
75 and Nashville, Tenn., via Guthrie, Ky., is 264 miles; via the N. C. & St. L. Railway whose line lies wholly within the State of Tennessee, 239 miles, or 25 miles less.

The distance via L. & N. between Nashville, Tenn., and Clarks-

ville, Tenn., via Guthrie, Ky., is 64 miles; while the distance via the Tennessee Central, whose line lies wholly within the State of Tennessee, is only 56 miles, or 8 miles less.

The distance via L. & N. and L. H. & St. L. between Evansville, Ind., and Cincinnati, O., is 265 miles; via the Southern Railway and Baltimore & Ohio Southwestern 246 miles, or 19 miles less.

The distance via L. & N. from Nashville, Tenn., to Knoxville, Tenn., via Lebanon Junction, Ky., is 403 miles; via Tennessee Central, Cincinnati Southern and Southern 216 miles, or 189 miles less, and the latter route lies wholly within the State of Tennessee.

The distance via L. & N. between Middlesboro, Ky., and Knoxville, Tenn., is 149 miles; via the Southern Railway 69 miles, or 80 miles less.

The distance via L. & N. between Atlanta, Ga., and Anniston, Ala., is 139 miles; via the Southern Railway 104 miles, or 35 miles less.

The distance via L. & N. between Montgomery, Ala., and River Junction, Fla., is 325 miles; via the Atlantic Coast Line 213 miles, or 112 miles less.

The distance via L. & N. between Atlanta, Ga., and Decatur, Ala., is 292 miles; via Southern Railway 280 miles, or 12 miles less.

The distance via L. & N. between St. Louis, Mo., and Memphis, Tenn., is 489 miles; via the Illinois Central 322 miles, or 167 miles less.

Petitioner respectfully submits that it, in connection with other carriers participating with it in joint traffic, are making, between a large number of points in Southern territory, the same rates as are charged by shorter lines, which, as to such traffic, are subject to the Act; and in every such instance petitioner and its connecting carriers are now handling traffic, important in amount, in competition with shorter routes.

76 Competition of Controlling Force in Respect to Traffic, Important in Amount, Between All-rail and Rail-and-water Carriers.

Petitioner respectfully submits that rail and water lines, of long established reputation and of extraordinary competitive force, are engaged in the transportation of property between New York, Boston, Philadelphia, Baltimore and Interior Eastern points, and points in Alabama, Mississippi, Louisiana, Florida, Georgia, Tennessee, Kentucky, and other States, by way of Atlantic and Gulf Ports; and as instances thereof, petitioner here makes reference to tariffs on file with the honorable Commission, as follows:

I. C. C. No. 15, issued by J. A. Ryan, Agent, in behalf of the Merchants & Miners Transportation Co. and Old Dominion Steamship Co., in connection with participating carriers named therein, applying on classes and commodities from Boston, Mass., Providence, R. I., and Interior Eastern points named, to local and junction points in the South and Southwest named, applying via water and rail, through Pinners Point, Va., Baltimore, Md., Philadelphia, Pa., Norfolk, Va., Newport News, Va., and Portsmouth, Va.

Also to Ocean Steamship Company's Tariff I. C. C. No. 279, and

M. & M. T. Co.'s I. C. C. No. 47, applying on classes and commodities from Boston, Providence, New York, Philadelphia, and Interior Eastern and New England points, to points in the South and Southwest, by way of Savannah, Ga.

Also Tariff I. C. C. No. 16, issued by John A. Ryan, Agent, from New York, Philadelphia, Baltimore, Washington and Alexandria, and Interior Eastern points, to local and junction points in the South and Southwest, via water and rail, through Pinners Point, Norfolk, Newport News and Portsmouth, Va.

Also to Philadelphia & Gulf Steamship Co. Tariff I. C. C. No. 14, applying on classes and commodities from Boston, New York, Philadelphia, Baltimore, and Interior Eastern points, to
77 points in Arkansas, Louisiana and Mississippi, via water and rail, through Philadelphia, Pa., and New Orleans, La.

Also to Ocean Steamship Co.'s Tariff I. C. C. No. 278 and Merchants & Miners Transportation Co. Tariff I. C. C. No. 46, applying on classes and commodities from Boston, Mass., New York, Philadelphia, Baltimore, and Interior Eastern and New England points, to Western points, by water and rail, through Savannah, Ga.

Also to Tariff I. C. C. No. 8, issued by A. P. Gilbert, Agent, in behalf of the Baltimore Steam Packet Co., from Norfolk, Old Point, Pinners Point, Portsmouth, Smithfield and Suffolk, Va., to Western points.

Also to Mallory Line Steamship Co.'s Tariffs I. C. C. No. 113 and 151, applying on classes and commodities from New York, Boston, Philadelphia, Baltimore, and Interior Eastern points, to points in Alabama, Mississippi, Georgia and Tennessee, via Mobile, Ala.

Also Brunswick Steamship Co.'s Tariff I. C. C. No. 102, applying from New York, Philadelphia, Baltimore, Boston and Providence, and Interior points named, to points in Alabama, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee, by water and rail, through Brunswick, Ga.

Also Merchants & Miners Transportation Co. Tariff No. 49, applying on classes and commodities from Boston, Fall River, Providence, and other Eastern points, to Chicago, Ill., by water and rail, through Baltimore, Newport News and Norfolk.

Also to M. & M. T. Co.'s Tariff I. C. C. No. 14, applying on classes and commodities from Boston, Fall River, Providence, and other Eastern points named, to Western points, by water and rail, through Norfolk, Pinners Point, Newport News, Portsmouth, Va., Baltimore and Philadelphia.

In addition to the above, petitioner respectfully submits that the Morgan Line Steamers, operated in conjunction with the Southern Pacific Railway lines, is engaged in active competition with all rail lines of which your petitioner's lines form a part, for traffic between the Eastern Seaboard and Interior Eastern points, and points
78 in Louisiana, Mississippi and Alabama.

Also, said Morgan Line Steamers, in conjunction with the Southern Pacific rail lines and connections, are handling traffic from the Eastern Seaboard and Interior Eastern points, by way of Galveston, Texas, to points in Texas, New Mexico, Colorado, Arizona,

Utah, Nevada, California, and other Western States, in competition with all rail routes of which your petitioner's lines form a part.

79 Competition Between Markets of Production.

Pig iron furnaces are located at:

Alabama City, Anniston, Attalla, Pell City, Columbiana, Gadsden, Ironaton, Jenifer, Rock Run, Talladega, Shelby, Round Mountain, Bessemer, Birmingham, East Birmingham, Boyles, Ensley, Holt, North Birmingham, Oxmoor, Pratt City, Thomas, Trussville, Woodward, Wheeling, Battelle, Bridgeport, Florence and Sheffield, Ala.; Tallapoosa, Rising Fawn, Rome and Cedartown, Ga.; Chattanooga, Cowan, Dayton, Rockwood, South Pittsburg, Ætna, Allen's Creek, Napier, Goodrich, Rockdale, Clarksville, Cumberland Furnace, Embreeville, Johnson City and La Follette, Tenn.; Middlesboro, Ky.; and at Big Stone Gap and other points in Virgina.

All of these furnaces compete with each other in the marketing of pig iron in the Southeastern territory, and with each other and with northern furnaces in marketing their product in the East, North and West.

Cotton goods are manufactured:

In Alabama at Alabama City, Alexander City, Anniston, Athens, Birmingham, Bon Air, Columbia, Cordova, Cottondale, Demopolis, Ellawhite, Enterprise, Eufaula, Florence, Girard, Huntsville, Jacksonville, Livingston, Mobile, Montgomery, Munford, Opelika, Oxford, Pell City, Piedmont, Prattville, Roanoke, Rock Mills, Selma, Siluria, Speigner, Stevenson, Sycamore, Sylacauga, Talladega, Tallassee, Tuscaloosa and Union Springs;

In Georgia at Acworth, Albany, Aragon, Atco, Athens, Atlanta, Augusta, Ball Ground, Banning, Barnesville, Beverly, Calhoun, Canton, Carrollton, Cedartown, Chattahoochee, Cochran, Columbus, Commerce, Covington, Crawford, Dallas, Dalton, Decatur, Douglasville, Dublin, Eastman, East Point, Eatonton, Eagan, Elberton, Fitgerald, Forsyth, Fort Valley, Gainesville, Glovers, Grantville, Greensboro, Griffin, Habersham, Hampton, Hartwell, Hawkinsville, High Shoals, Hogansville, Jackson, Jefferson, Jewell, La Fayette, La Grange, Lavonia, Lawrenceville, Lindale, Macon, Manchester, Millen, Milstead, Monroe, Moultrie, New Holland, Newman, Palmetto, Pelham, Porterdale, Potterville, Poulan, Quitman,
80 Raccoon Mills, Rome, Roswell, Sargent, Savannah, Scottdale, Senoia, Social Circle, Sparta, Summerville, Tallapoosa, Tennille, Thomaston, Thomason, Tifton, Tocca, Trion, Valdosta, Villa Rica, West Point, Whitehall, Winder and Woodstock;

In Louisiana at New Orleans;

In Kentucky at Covington, Grahamton, Henderson, Louisville, Maysville and Paducah;

In Mississippi at Agricultural College, Batesville, Columbus, Kosciusko, Laurel, Magnolia, McComb City, Meridian, Moorhead, Natchez, Starkville, Stonewall, Tupelo, Water Valley, Wesson, West Point, Winona and Yazoo City;

In North Carolina at Albemale, Ashville, Belmont, Bessemer

City, Biscoe, Brevard, Brookford, Burlington, Bynums, Cameron, Caroleen, Cedar Falls, Central Falls, Chapel Hill, Charlotte, Cherryville, China Grove, Clayton, Cliffside, Coleridge, Concord, Cooleemee, Cornelius, Cumberland, Dallas, Davidson, Double Shoals, Draper, Duke, Durham, Edenton, Elizabeth City, Elkin, Elon College, Fayetteville, Forest City, Franklinton, Franklinville, Gastonia, Gibsonville, Goldsboro, Graham, Granite Falls, Greensboro, Harden, Haw River, Henderson, Henrietta, Hickory, High Falls, High Point, High Shoals, Hildebran, Hillsboro, Hope Mills, Huntersville, Jamestown, Jonesboro, Kannapolis, Kimesville, King's Mountain, Kinston, Landis, Laurel Hill, Laurinburg, Lawndale, Leaksville, Lenoir, Lexington, Liledoun, Lincolnton, Long Island, Long Shoals, Lowell, Lumberton, Maiden, Manchester, Marion, Marshall, Mayesworth, Mayodan, McAdensville, Monbo, Monroe, Mooresville, Morganton, Mount Airy, Mount Holly, Mountain Island, Mt. Pleasant, New London, Newton, North Wilkesboro, Norwood, Oxford, Patterson, Pilot Mountain, Pineville, Raeford, Raleigh, Ramseur, Randleman, Reidsville, Rhodiss, Roanoke Rapids, Rockingham, Rockwell, Rocky Mount, Roxboro, Rutherfordton, St. Pauls, Salisbury, Sanford, Saxapahaw, Selma, Shelby, Siler City, Smithfield, Southside, Spray, Stanley, Stanley Creek, Statesville, Stony Point, Stubbs, Swepsonville, Tarboro, Taylorsville, Thomasville, Troy, Turnersburg, Tuxedo, Vass, Wadesboro, Wake Forrest, Warrenton, Waxhaw, Weldon, Wendell, Willardville, Wilmington, Wilson, Winston-Salem, Worthville and Zebulon;

In South Carolina at Abbeville, Aiken, Anderson, Arcadia, Arkwright, Arlington, Autun, Bamberg, Batesburg, Batesville,
81 Bath, Belton, Bennettsville, Calhoun Falls, Camden, Cateechee, Central, Charleston, Cheraw, Cherokee Falls, Chester, Clearwater, Clemson College, Clifton, Clinton, Clio, Clover, Columbia, Cowpens, Darlington, Dillon, Easley, Edgefield, Enoree, Fairmont, Fingerville, Fort Mill, Fountain Inn, Gaffney, Glendale, Goldville, Graniteville, Great Falls, Greenville, Greenwood, Greer, Hamer, Hartsville, Honea Path, Inman, Irene, Iva, Jonesville, Lancaster, Lando, Langley, Laurens, Lexington, Liberty, Lockhart, Marion, McColl, Newberry, Henry, Orangeburg, Pacolet, Pelham, Pelzer, Pendleton, Pickens, Piedmont, Rock Hill, Senaca, Simpsonville, Spartanburg, Sumter, Tucapau, Union, Vaucluse, Wahalla, Waterboro, Ware Shoals, Warrenville, Welford, Westminster, Whitmire, Whitney, Williamston, Winnsboro, Woodruff and Yorkville;

In Tennessee at Bemis, Chattanooga, Columbia, Covington, Elizabethton, Englewood, Fall Mills, Fayetteville, Harriman, Humboldt, Jonesboro, Knoxville, Memphis, Nashville, Newport, Pine Wood, Rockford, Shelbyville and Trenton;

In Virginia at Danville, Emporia, Ettrick, Fries, Lynchburg, Martinsville, Matoaca, Norfolk, Petersburg, Richmond, Roanoke and South Boston.

Woolen goods are manufactured at:

Newton, Ala.;

Atlanta, Columbus, Lawrenceville, Marietta, Rossville and Roswell, Ga.;

Campbellsville, Falmouth, Franklin, Hopkinsville, Lexington, Louisville, Mayfield, Phil, Schley and Scottsville, Ky.;

Wesson, Miss.;

Elkin, Helton, Kernersville, Leaksville, Lincolnton, Mount Airy, Patterson, Plateau, Snow Camp, Spray, Weaverville and Winston-Salem, N. C.;

Athens, Bolivar, Cave, Chattanooga, Cleveland, Cumberland Gap, Doweltown, Jackson, Jefferson City, Knoxville, Lebanon, Maryville, McMinnville, Nashville, Springfield and Sweetwater, Tenn.;

Bedford City, Bonsack, Bridgewater, Brucetown, Callaway, Cedar Bluff, Charlottesville, Clifton Forge, Fincastle, Fredericksburg, Galax, Hillsboro, Laurel Mills, Manchester, Mount of Wilson, North Tazewell, Olympia, Port Stephenson, Willis, Winchester and Wytheville, Va.

82 Knit goods are manufactured,

In Alabama at: Alexander City, Anniston, Ft. Payne, Huntsville,, Talladega, Tuscaloosa.

In Georgia at: Athens, Atlanta, Augusta, Banning, Barnesville, Cedartown, Columbus, Dallas, Dalton, Douglasville, Ft. Valley, Grantville, Hampton, La Fayette, Macon, Marietta, Montezuma, Penfield, Rockmart, Rome, Rossville, Savannah, Union Point.

In Kentucky at: Louisville, Middlesboro, Paducah.

In Mississippi at: Meridian.

In North Carolina at: Albemale, Apex, Ashboro, Burlington, Cameron, Carthage, Chapel Hill, Cooleemee, Cotton, Drexel, Durham, Elizabeth City, Elon College, Enfield, Fayetteville, Flat Rock, Forest City, Goldsboro, Graham, Greenville, Haw River, Helton, Hickory, High Point, Kernersville, Kinston, Littleton, Marion, Mt. Pleasant, Moorsville, Newton, Penrose, Raleigh, Randleman, Robersonville, Rocky Mount, Sanford, Scotland Neck, Selma, Statesville, Tarboro, Tryon, Valdese, Vaughan, Wake Forest, Washington, Weldon, Wilson, Winston-Salem, Zebulon.

In South Carolina at: Blackville, Bowling Green, Columbia, Jonesville, Lanrum, Lexington, Manning, Montmorenci, Newberry, Spartanburg, Union, Walhalla, Westminister.

In Tennessee at: Athens, Bristol, Chattanooga, Cleveland, Clinton, East Chattanooga, Harriman, Johnson City, Knoxville, La Follette, Lenoir City, Loudon, Madisonville, Maryville, Norristown, Nashville, Niota, Ooltewah, Rockwood, South Pittsburg, Sweetwater, Winchester.

In Virginia at: Berkley, Bristow, Danville, Lynchville, Norfolk, Portsmouth, Radford, South Boston, Suffolk, Virginia, Williamsburg, Winchester.

These factories are engaged in the manufacture of various forms of cotton, knit and wollen goods, including batting, cotton blankets, colored goods, comfortables, converters goods, cottonades, cotton felts, cotton and wool waste, cotton flannels, cotton and linen crash towels, damask, denims, dobby goods, dress goods, duck and osnaburgs, (including ticks and awnings) cotton, woolen and mohair plushes,

83 print cloths, sateens, sheetings, shirtings and drills, (including jeans and twills) spool cotton and thread, upholstery goods, (including covers and curtains) carpet yarns, cotton yarns

and warps, woolen blankets, carding and rolls, flannels, woolen men's wear, shoddy, skirts and other articles.

Fertilizer is manufactured,

In Alabama at: Albertville, Alexander City, Anniston, Ashland, Birmingham, Boaz, Brewton, Brundidge, Clayton, Cullman, Dadeville, Dothan, Eufaula, Evergreen, Florence, Geneva, Headland, Huntsville, Jacksonville, Lineville, Luverne, Mobile, Montgomery, Northport, Opelika, Ozark, Roanoke, Slocomb, Talladega, Thomasville, Troy, Tuscaloosa, Union Springs.

In Florida at: Gainesville, Jacksonville, Marianna, Tampa.

In Georgia at: Albany, Arlington, Athens, Atlanta, Augusta, Baldwin, Bartow, Blackshear, Blakely, Bogart, Bostwick, Brazelton, Buford, Camilla, Cannon, Canton, Carrollton, Cartersville, Coleman, Columbus, Covington, Cummings, Cuthbert, Davisboro, Dawson, Decatur, Dewey Rose, Eastman, Edison, Elberton, Fairburn, Farmington, Fayetteville, Fitzgerald, Fort Gaines, Fort Valley, Franklin, Gainesville, Grovania, Hampton, Hawkinsville, La Grange, Lawrenceville, Louisville, Lumpkin, McRea, Mableton, Macon, Madison, Mansfield, Meigs, Monroe, Monticello, Moreland, Newnan, Ocilla, Pelham, Putney, Quitman, Richland, Royston, Rutledge, Sandersville, Savannah, Senoia, Statesboro, Stillmore, Sylvania, Tennille, Thomasville, Thompson, Tifton, Union Point, Valdosta, Vienna, Warrenton, Washington, Waynesboro, Wintersville, Woodbury, Wrens.

In Kentucky at: La Grange, Louisville.

In Louisiana at: Arcadia, Clinton, Homer, New Orleans, Ruston.

In Mississippi at: Brookhaven, Canton, Columbus, Crystal Springs, Gulfport, Hazelhurst, Jackson, Kosciuke, Laurel, Meridian, Shubuta, Tupelo, Wesson.

In North Carolina at: Asheville, Bayboro, Charlotte, Clayton, Concord, Davidson, Fayetteville, Gastonia, Hertford, Marshville, Monroe, New Bern, Pine Level, Raleigh, RedSprings, Reidsville, Rocky Mount, Shelby, Statesville, Washington, Wilmington, Wilson, Winston-Salem.

84 In South Carolina at: Allendale, Anderson, Barnwell, Brunson, Charleston, Columbia, Dillon, Florence, Gaffney, Kershaw, Seneca, Spartanburg, Union, West Union.

In Tennessee at: Columbia, Cookeville, Mt. Pleasant, Nashville, Springfield.

In Virginia at: Alexandria, Blackstone, Buena Vista, Cape Charles, Chilhowie, Eastville, Ellerson, Harborton, Kilmarnock, Norfolk, Petersburg, Reedville, Richmond, Roanoke.

Cotton seed oil mills are located,

In Alabama at: Albertville, Ashland, Birmingham, Boaz, Brewton, Camden, Dadeville, Demopolis, Enterprise, Epes, Eutaw, Evergreen, Faunsdale, Fayette, Florence, Greensboro, Huntsville, Hurtsboro, Jacksonville, La Fayette, Lincoln, Lineville, Luverne, Montgomery, Notasula, Opelika, Oxford, Ozark, Prattville, Roanoke, Selma, Sulligent, Talladega, Thomasville, Troy, Tuscaloosa, Tuskegee, Uniontown.

In Florida at: Jacksonville, Madison, Marianna, Tallahassee.

In Georgia at: Abbeville, Albany, Americus, Athens, Atlanta, Augusta, Avalon, Bainbridge, Blackshear, Blakely, Bogart, Bostwick, Bowden, Buford, Camilla, Campton, Cannon, Carrollton, Cochran, Columbus, Comer, Commerce, Conyers, Cornelia, Cummings, Cuthbert, Davisboro, Dawson, Eastman, Eatonton, Elberton, Fairburn, Farmington, Fitzgerald, Flowery Branch, Fort Valley, Franklin, Gainesville, Garfield, Grantville, Greenville, Grovania, Hartwell, Hawkinsville, Hazelhurst, Hogansville, Hoschton, Jersey, La Grange, Lawrenceville, Louisville, Macon, McRae, Martin, Maysville, Milledgeville, Millen, Montezuma, Monticello, Munnerlyn, Newman, Ocillo, Pelham, Pendergrass, Quitman, Royston, Rutledge, Sandersville, Savanah, Senoia, Shellman, Smithonia, Social Circle, Sparta, Statesboro, Summerville, Sylvania, Sylvester, Thomaston, Thomson, Toccoa, Union Point, Valdosta, Vidalia, Vienna, Villa Rica, Waynesboro, West Point, Winder, Woodbury, Woodstock, Wrens.

In Kentucky at: Hickman, Louisville.

In Louisiana at: Abbeville, Alexandria, Arcadia, Bastrop, Batchelor, Baton Rouge, Boyce, Breaux Bridge, Broussard, Cinclare, Clinton, Colfax, Eunice, Gibbsland, Hammond, Homer, Kentwood, La Fayette, Lake End, Lake Providence, Le Compte, Long-
85 bridge, Mansfield, Minden, Monroe, Natchitoches, New Iberia, New Orleans, New Roads, Opelousas, Rayne, Ruston, St. Francisville, St. Joseph, St. Martinsville, Shreveport, Sunset, Tallulah, Terras, Vidalia, Washington.

In Mississippi at: Aberdeen, Anguilla, Arcola, Baldwyn, Barlow, Brookhaven, Canton, Carrollton, Centreville, Clarkesdale, Coldwater, Columbus, Como, Corinth, Grenshaw, Crystal Springs, Deeson, Edwards, Friars Point, Glen Allen, Gloster, Greenville, Greenwood, Grenada, Gulfport, Harriston, Hazelhurst, Hollandale, Holly Springs, Hollywood, Houston, Indianaola, Itta Bena, Jackson, Jonestown, Kosciusko, Laurel, Leland, Lexington, Macon, Magnolia, Meridan, Minter City, Moorhead, Natchez, New Albany, Newton, North Carrollton, Okolona, Oxford, Pontotoc, Port Gibson, Rolling Fork, Rosedale, Sardie, Senatobia, Shaw, Shelby, Shubuta, Tunica, Tupelo, Vicksburg, Wesson, West Point, Winona, Yazoo City.

In North Carolina at: Battlesboro, Charlotte, Clayton, Cleveland, Dunn, Fremont, Gastonia, Hertford, Kings Mountain, Kinston, Lattimore, Lanrinburg, Louisburg, Lumberton, Monroe, Mooresville, Nashville, New Bern, Pine Level, Pittsboro, Red Springs, Rocky Mount, St. Lewis, Scotland Neck, Spring Hope, Statesville, Tarboro, Washington, Wilmington, Wilson, Winterville.

In South Carolina at: Allendale, Anderson, Antreville, Bamberg, Bishopville, Blackburg, Bradley, Brunson, Cameron, Campobello, Clinton, Clio, Columbia, Coronaca, Cowpens, Cross Anchor, Darlington, Donalds, Duncans, Easley, Edgefield, Fairfax, Fairforest, Fort Motte, Fountain Inn, Gaffney, Glenn Springs, Goldville, Gray Court, Greer, Hartsville, Honea Path, Johnston, Jonesville, Kershaw, Kingstree, Lancaster, Lanford Station, Leesville, Liberty, Lydia, Marion, Newberry, Pelzer, Pickens, Pomaria, Prosperity, Ridge Spring, Rock Hill, Rowesville, St. George, St. Paul, Salley, Saluda, Seneca, Simpsonville, Starr, Timmonsville, Townville, Troy, Waterboro, Wellford,

Westminster, West Union or Walhalla, West Union, Wilkinsville, Woodruff, Yorkville.

In Tennessee at: Brownsville, Covington, Memphis, Nashville, Ripley, Tiptonville.

Phosphate rock is extensively mined in the Mt. Pleasant and Centerville Districts of Tennessee, the Hard Rock and Pebble District of Florida, and in South Carolina.

86 Marble, for building purposes, interior decorating and monumental work, is extensively mined and dressed in Georgia, Tennessee and Alabama.

Cement is manufactured at Louisville, Ky., Richard City, Sherwood, South Pittsburgh and Chattanooga, Tenn., Birmingham, Demopolis and Spokari, Ala., Rockmart, Ga.; and Fordwick, Va.

Lime is manufactured at a large number of points in Southeastern territory, the most important of which are:

Alabaster, Ala., Anniston, Ala., Apison, Tenn., Aragon, Ga., Bangor, Ala., Blount Springs, Ala., Burns, Tenn., Calois, Ala., Calera, Ala., Chattanooga, Tenn., Cobb City, Ala., Concord, Tenn., Daisy, Tenn., Davites, Ga., Deming, Ala., Dickson, Ala., Doyle, Ala., Fort Payne, Ala., Graysville, Ga., Graysville, Tenn., Halos' Kiln, Ala., Hardy's Kiln, Ala., Keystone, Ala., Knoxville, Tenn., Laddo, Ga., La Gards, Ala., Lim Rock, Ala., Longview, Ala., Luttrell, Tenn., Newala, Ala., Prido, Ala., Rockmart, Ga., Rock Springs, Ala., Rossville, Ga., Saginaw, Ala., Sherwood, Tenn., Siluria, Ala., Spring City, Tenn., Summittville, Tenn., Talladega, Ala., Thatchers, Tenn., Tredegar, Tenn., Vernons, Ala., and Wooten's Siding, Tenn.

Coal is extensively mined in the states of Kentucky, Virginia, Tennessee, Alabama, Indiana and Illinois, along the lines of the Louisville & Nashville and many other companies, including particularly the Southern Railway: Virginia & Southwestern, Interstate, Norfolk & Western, Carolina, Clinchfield & Ohio, N. C. & St. L., Illinois Central, Alabama Great Southern, Frisco, Central of Georgia and Chattanooga Southern.

Coke is manufactured extensively in Virginia, Alabama, Tennessee and Illinois.

Yellow pine lumber, and other kinds of lumber, are extensively manufactured in Alabama, Mississippi, Louisiana, Georgia, Florida, North and South Carolina, Virginia, Kentucky and Tennes-

87 see.

Special lines of production and manufacture are carried on at practically all of the common and junction points, and at a large proportion of the local stations in Southeastern territory.

Each of these lines of industry produces more product than can be marketed in its immediate vicinity, and it is therefore forced into competition with similar lines at all Southern points and points in other territories. Pig iron manufactured in Southern furnaces, is marketed in the East, North and West, as well as in the South and, at times, considerable quantities are exported. Cotton and woolen goods manufactured in the South, are marketed in all directions throughout the United States and abroad. Fertilizer, manufactured in the South, is marketed principally in the South, al-

though the manufacturers in Tennessee and Kentucky are able to dispose of their surplus product to a considerable extent, in the States of Arkansas, Missouri, Illinois, Indiana and Ohio. Phosphate rock, mined in Tennessee, Florida and Carolina fields, is sold to manufacturers of fertilizer in the South, and also in the East, North and Middle West; and also exported through the Gulf and South Atlantic ports. Ground phosphate rock, manufactured in Tennessee, is extensively sold as a direct fertilizer, to consumers in Illinois, Indiana, Ohio, Pennsylvania and New York.

As illustrating generally the method by which it and other Southern carriers have dealt with the question of competition between markets of production, petitioner submits the following explanation of the basis for rates on pig iron from Southern producing points to Ohio and Mississippi River Crossings proper:

The rate from Birmingham to Louisville is first determined, having in view the rates from producing points north thereof, the relative distances and the quality and character of the iron, including the prevailing prices; the same rate is applied from the furnaces at Alabama City, Anniston, Attalla, Bessemer, Boyles, Ala., Cedartown, Ga., East Birmingham, Ensley, Gadsden, Holt, Ironton, Jenifer, North Birmingham, Oxmoor, Rock Rim, Ala., Rome, Ga., Round Mountain, Shelby, Talladega, Ala., Tallapoosa, Ga.,
88 Thomas, Trussville, Wheeling, Woodward, Ala., for the reason that those points make the same character or quality of iron that is made at Birmingham, and there is no great difference in the length of the short line haul to Louisville. Chattanooga, Tenn, Battelle, Ala., and Rising Fawn, Ga., are then made 25 cents per ton less than Birmingham, in consideration of the shorter haul. Florence and Sheffield, Ala., and Napier, Tenn., are also made 25 cents less than Birmingham. Rockdale, Tenn., is made 25 cents less than Sheffield. From Clarksville, Bear Spring and Cumberland Furnace, Tenn., the rate is $1.00 per ton less than Birmingham. From Goodrich, Tenn., the same as from Cumberland Furnace. From Allens Creek, Tenn., the same as from Goodrich. From South Pittsburg, Tenn., the same per mile as from Chattanooga. From Dayton and Rockwood, Tenn., 20 cents less than Chattanooga. From La Follette, Tenn., 50 cents less than from Chattanooga. From Middlesborough, Ky., 50 cents less than Chattanooga. From Bristol, Carnegie, Elizabethton, Embreeville and Johnson City, Tenn., same as from Birmingham.

It will be seen, therefore, that the whole adjustment hinges on Birmingham, which is selected as the pivotal point because it is the largest center of production and is for that reason representative of all the conditions surrounding the marketing of Southern pig iron at Louisville.

The rate to Louisville being fixed in the manner illustrated, the rate from Birmingham to Cincinnati and group is made 25 cents higher; Crossings on the South and East banks below Louisville and above Memphis—that is to say, Columbus, East Cairo, Henderson, Hickman, Owensboro and Paducah, Ky.—are made the same as Louisville; while the Crossings on the North and West banks,

viz:—Belmont, Mo., Brookport, and Cairo, Ill., Evansville, Jeffersonville and New Albany, Ind., are made 25 cents higher than Louisville, except that to Jeffersonville and New Albany Louisville proper combination is observed as the maximum rate. St. Louis and group are made 75 cents higher than Louisville. Memphis is made the same as from Chattanooga, which in turn is 25
89 cents less than from Chattanooga to Louisville. To New Orleans proper, La., Vicksburg, Miss., Mobile, Ala., and Pensacola, Fla., 50 cents higher than to Memphis.

From Chattanooga, Battelle and Rising Fawn: to Cincinnati and group 50 cents less than Birmingham; to Louisville, New Albany, Jeffersonville and all Ohio and Mississippi River Crossings below Louisville and above Memphis, including St. Louis and group, 21 cents less than from Birmingham; to Memphis 25 cents less than from Chattanooga to Louisville; to Vicksburg, Miss., New Orleans proper, La., Mobile, Ala., and Pensacola proper, Fla., 45 cents higher than from Birmingham.

From Florence, Sheffield and Napier: to St. Louis and group and Memphis, 45 cents less than from Birmingham; to all other Crossings above Memphis 25 cents less than from Birmingham; to Vicksburg, New Orleans proper, Mobile, and Pensacola proper, same as from Chattanooga.

From Rockdale: to Louisville, Cincinnati, Evansville and other Ohio River Crossings, St. Louis and group, 25 cents less than from Sheffield; to Vicksburg, New Orleans proper, Mobile and Pensacola proper, same as from Sheffield.

From Middlesborough: to Cincinnati and group, Louisville, Jeffersonville and New Albany, 50 cents less than from Chattanooga; to Memphis and New Orleans 50 cents higher than from Chattanooga; to all crossings above Memphis and below Louisville, same as from Chattanooga.

From La Follette, Tenn., same as from Middleborough.

From Bristol group: to Cincinnati and group same as from Birmingham to Louisville; to Louisville, Jeffersonville, New Albany and all crossings below Louisville and above Memphis, including St. Louis and group, same as from Birmingham; to Memphis 50 cents higher than from Chattanooga.

From Dayton and Rockwood: to Paducah, Cairo, Memphis and all crossings between Cairo and Memphis, same as from Chattanooga; to all crossings north of Paducah, including St. Louis and group, 20 cents less than from Chattanooga; to Mobile and New Orleans 25 cents higher than from Chattanooga.

90 From Goodrich; to Cairo and Belmont, same as from Cumberland Furnace; to Evansville same as Cairo; to Henderson, Owensboro and Louisville, same as to Evansville; to Cincinnati 25 cents higher than to Louisville; to Jeffersonville and New Albany the bridge toll higher than to Louisville; to Memphis same as from Sheffield.

From Allens Creek; to Cairo and Belmont 25 cents higher than from Goodrich; to Evansville same as Cairo; to Henderson, Owensboro and Louisville, same as to Evansville; to Cincinnati 20 cents

higher than to Louisville; to Jeffersonville and New Albany the bridge toll higher than to Louisville; to Memphis the same as from Sheffield.

From South Pittsburgh; the same per mile as from Chattanooga.

From Clarksville and Cumberland Furnace: to Ohio River Crossings and St. Louis group $1.00 less than from Birmingham; to Memphis 25 cents higher than Sheffield.

From Bear Spring same as from Clarksville and Cumberland Furnace.

On the same general lines, rates have been established to points North and West of the Ohio and Mississippi River Crossings; to points East of Buffalo and Pittsburgh; to Virginia cities and ports; and to points in Canada; to Southeastern and Carolina points; to Mississippi Valley points; and to West Tennessee and Southern Kentucky junctions;—that is to say, after ascertaining the competitive conditions existing at the objective points, rates are established from all the furnaces on a relative basis which has due regard for the advantage or disadvantage of each in respect to distance and location.

The manufacturers of yellow pine lumber, in the territory east of the Mississippi River, market a very large proportion of their product in the Middle West and North, in competition with manufacturers located west of the river in the States of Arkansas, Louisiana and Texas. Cairo is the base point upon which the rates from the Southwest, to the territory in question, are made. The rates or proportions charged north of Cairo, on this Southwestern
91 lumber, are also applicable to lumber from the Southeast.

It is obvious, therefore, that to enable the Southeastern manufacturers to compete, Southeastern lines must construct through rates on lumber from their mills to the territory in question, by adding to the rates or arbitraries from Cairo, such rate or proportion as will make the through rate from the Southeast, equal to that which is applied from the Southwest. The through rate, so constructed, is then published to apply through any and all of the Ohio River Crossings. By reason of this competition between markets of production, the Louisville & Nashville Railroad Company is compelled to observe this method of constructing through rates, notwithstanding none of its lines reach Cairo and to permit the business to go via that route would deprive the Louisville & Nashville Railroad Company of the haul, certainly north of Nashville, and, in a great many instances, north of Birmingham, to Evansville, Louisville and Cincinnati, through which long haul junctions it is able to effect delivery at practically all points that can be reached through Cairo: and it must continue to observe said method of constructing its through rates or deprive the manufacturers doing business upon its line of the opportunity to compete, on equal terms, with manufacturers located in the Southwest and upon other lines in the Southeast, in the territory North and West of the Ohio River, access to which is absolutely necessary to the profitable operation of its mills, because of the fact that the territory in which they have the advantage is not sufficient to consume all their production.

Furniture is manufactured at a large number of points in the

States of Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Florida, Georgia, North and South Carolina and Virginia, among which may be mentioned:

Abbeville, S. C., Aberdeen, N. C., Albemarle, N. C., Asheboro, N. C., Asheville, N. C., Biltmore, N. C., Biscoe, N. C., Burlington, N. C., Carthage, N. C., Charlotte, N. C., Chase City, Va., Chatham, Va., China Grove, N. C., Clarksville, Va., Collettsville, N. C., Concord, N. C., Cornelius, N. C., Danville, Va., Drexel, N. C., Dunn, N. C., Durham, N. C., Elkin, N. C., Fayetteville, N. C., Gibsonville, N. C., Goldsboro, N. C., Goldston, N. C., Granite Falls, N. C.,
92 Greenboro, N. C., Greenville, S. C., Gulf, N. C., Hazelwood, N. C., Hickory, N. C., High Point, N. C., Hudson, N. C., Jamestown, N. C., Julian, N. C., Kernersville, N. C., King, N. C., Kinston, N. C., Lawrenceville, Va., Lenoir, N. C., Lexington, N. C., Liberty, N. C., Madison, Marion, N. C., Martinsville, Va., Mebane, N. C., Millboro, N. C., Mocksville, N. C., Mooresville, N. C., Morganton, N. C., Mt. Airey, N. C., Murphy, N. C., North Wilkesboro, N. C., Ore Hill, N. C., Oxford, N. C., Pilot Mountain, N. C., Pleasant Garden, N. C., Raleigh, N. C., Ramseur, N. C., Randleman, N. C., Reidsville, N. C., Rocky Mount, Va., Rural Hall, N. C., Rutherford, N. C., Salisbury, N. C., Sanford, N. C., Seagrove, N. C., Selma, N. C., Siler City, N. C., Spartansburg, S. C., Staley, N. C., Star, N. C., Statesville, N. C., Stuart, Va., Taylorsville, N. C., Thomasville, N. C., Trinity, N. C., Union, S. C., Valmead, N. C., Walnut Cave, N. C., Waynesville, N. C., Winston-Salem, N. C., Frankfort, Ky., Marysville, Tenn., Marietta, Ga., Cullman, Ala., Washington, Ga., Elizabethton, Tenn., Aroca, Tenn., Cheraw, S. C., Laurens, S. C., Wadesboro, N. C., Warrenton, N. C., Johnson City, Tenn., Glasgow, Ky., Lawrenceburg, Tenn., Anniston, Ala., Birmingham, Ala., Bowling Green, Ky., East Nashville, Tenn., Henderson, Ky., Knoxville, Tenn., Memphis, Tenn., Nashville, Tenn., New Decatur, Ala., Owensboro, Ky., Sheffield, Ala., Sparta, Ky., Talking Rock, Ga., Talladega, Ala., Thorsby, Ala., Woodlawn, Ala., Atlanta, Ga., Rome, Ga.

The miners of phosphate rock in the Mt. Pleasant and Centerville districts of Tennessee, are in competition with Florida miners in all the intermediate territory, as a result of which the rates from Mt. Pleasant and Centerville are, necessarily, the same, and in addition, bear a relation, proportionate with the difference in distance, to the rates from the Florida mines. To Atlanta, Rome, Montgomery, Birmingham and points north and west thereof, the rates from Mt. Pleasant and Centerville are approximately 40 cents per gross ton less than from Florida mines. To Newman, Opelika, Social Circle and other points along that line, (which, by reason of similarity of distance, may be regarded as common ground,) the rates from Centerville, Mt. Pleasant and Florida are the same; while to that territory south and east of the points mentioned, the advantage in favor of Florida mines is about 40 cents per gross ton. This adjustment
93 is necessarily to maintain an equality of transportation conditions, as between the Tennessee and Florida districts, and has the merit of giving to each equal rates in common territory and equalizing their disadvantages in other territories.

The rates on phosphate rock from the Tennessee districts to the territory north of the Ohio River, have been made to meet the competition of Florida rock moving by water and rail through Baltimore and the Eastern Seaboard; and the propriety of this adjustment received the consideration of your honorable Commission in the case of Darling & Co., et al., vs. Baltimore & Ohio Southwestern Railway Co., et al., 15th, I. C. C. 79.

The rates on coal from mines on the L. & N. R. R., between Jellico, Tenn., and Knoxville, Tenn., to the Southeast, are necessarily the same as the rates from opposite mines on the Southern Ry., the distance being practically the same and the coal being mined and marketed under identically the same conditions. The rates from L. & N. mines north of Jellico are made a differential of 5 and 10 cents per ton, respectively, higher than Jellico, according to the length of the haul up to Jellico. The rates on coal from Alabama mines on the L. & N., Southern and other roads, to the principal points of consumption in the State of Georgia, are the same as from Coal Creek. The rates on coal from L. & N. mines in Tennessee, Eastern Kentucky and Southwest Virginia to points of destination in territory north of the Ohio and east of the Indiana-Illinois State line, are necessarily the same as from the principal competing districts, namely—the Kanawha and New River districts of the C. & O. Railway, the Thacker and Pocahontas districts of the Norfolk and Western, the Fairmont and Cumberland-Piedmont districts of the Baltimore & Ohio and the Pittsburgh and Pennsylvania districts on the Pennsylvania Railroad. The rates on coal from L. & N. mines in Tennessee, Eastern Kentucky and Southwestern Virginia, to Louisville, Jeffersonville and New Albany, are made to enable those miners to compete with Pennsylvania and West Virginia coal brought down the Ohio River by barge, and also to compete with rail coal brought from the Kanawha and New River districts on the C. & O., the Western Kentucky district of the Illinois
94 Central and L. H. & St. L. roads, and the Indiana district of the Southern Ry. The rates on coal from said mines to Cincinnati, O., are made to enable the operators to compete with Pennsylvania and West Virginia coal brought down the Ohio River by barge, and also with coal brought in by rail from West Virginia, Pennsylvania and Ohio districts.

The rates on coke from ovens on the L. & N. R. R. In Eastern Kentucky and Southwest Virginia, are made to enable those manufacturers to compete with Connellsville, Pa.

What has been said with respect to commodities specifically mentioned is equally true of all other commodities manufactured in the South, and it has been the universal custom of the southern roads originating the traffic in question and participating in the transportation thereof, to establish rates that would enable industries to meet competition in their respective lines, regardless of whether such industries are located at local or competitive points.

At the intermediate points involved in these various adjustments, petitioner states that there exists none of the competitive conditions which measure the rates applied at the longer distance points;

wherefore, petitioner has applied, for many years, and desires, in the future, to apply to and from such intermediate stations, its just and reasonable local mileage scales of rates, except as modified by the aggregate of intermediate rates subject to the Act to Regulate Commerce.

95 Competition Between Markets of Distribution.

Markets of distribution are those jobbing and trade centers at which commodities are usually received at wholesale and forwarded thence to the consumer in smaller quantities, suited to his requirements, the dealer at the jobbing point or trade center being neither producer nor consumer. The most important of such points in the Southern territory are:

Abbeville, S. C., Aberdeen, Miss., Albany, Ga., Aiken, S. C., Americus, Ga., Andalusia, Ala., Anderson, S. C., Anniston, Ala., Asheville, N. C., Athens, Ga., Atlanta, Ga., Attalla, Ala., Augusta, Ga., Bainbridge, Ga., Beaufort, S. C., Bessemer, Ala., Birmingham, Ala., Bristol, Tenn., Va., Brunswick, Ga., Cartersville, Ga., Cedartown, Ga., Charlestown, S. C., Charlotte, N. C., Chattanooga, Tenn., Chester, S. C., Clarksville, Tenn., Columbia, S. C., Columbus, Miss., Columbus, Ga., Concord, N. C., Cordele, Ga., Corinth, Miss., Dalton, Ga., Darlington, S. C., Decatur, Ala., Demopolis, Ala., Dothan, Ala., Durham, N. C., Ellisville, Miss., Elizabeth, N. C., Eufaula, Ala., Fayetteville, N. C., Fernandina, Fla., Fitzgerald, Ga., Florala, Ala., Florence, Ala., Florence, S. C., Gadsden, Ala., Gaffney, S. C., Georgetown, S. C., Goldsboro, N. C., Grand Junction, Tenn., Greensboro, N. C., Greenville, S. C., Greenwood, S. C., Greenwood, Miss., Gulfport, Miss., Guntersville, Ala., Hattiesburg, Miss., Hawkinsville, Ga., Henderson, N. C., High Point, N. C., Holly Springs, Miss., Humboldt, Tenn., Jackson, Miss., Jackson, Tenn., Jacksonville, Fla., Knoxville, Tenn., Laurel, Miss., Laurens, S. C., Live Oak, Fla., Macon, Ga., Marietta, Ga., Martin, Tenn., McKenzie, Tenn., Memphis, Tenn., Meridian, Miss., Middlesboro, Ky., Milan, Tenn., Milledgeville, Ga., Mobile, Ala., Montgomery, Ala., Morristown, Tenn., Nashville, Tenn., New Albany, Miss., Newberry, S. C., New Orleans, La., Newbern, N. C., Newton, Miss., Norton, Va., Opelika, Ala., Orangeburg, S. C., Ozark, Ala., Paris, Tenn., Pensacola, Fla., Piedmont, S. C., Quincy, Fla., Quitman, Ga., Raleigh, N. C., Rockhill, S. C., Rome, Ga., Salisbury, N. C., Savannah, Ga., Selma, Ala., Sheffield, Ala., Summerville, Tenn., Sumter, S. C., Spartanburg, S. C., Talladega, Ala., Tampa, Fla., Tifton, Ga., Troy, Ala., Trussville,
96 Ala., Tupelo, Miss., Tuscaloosa, Ala., Tuscumbia, Ala., Union, S. C., Union City, Tenn., Union Springs, Ala., Valdosta, Ga., Vicksburg, Miss., Waycross, Ga., Westpoint, Miss., West Point, Ga., Wetumpka, Ala., Wilmington, N. C., Winona, Miss., Winston-Salem, N. C., and Yazoo City, Mich.

There is still another class of markets of distribution namely,—those which supply goods in wholesale, to the jobbers and dealers at the jobbing points and trade centers mentioned above. Within

this description are Cincinnati, O., Louisville, Ky., St. Louis, Mo., Memphis, Tenn., Richmond, Lynchburg, Va., and others.

Petitioner respectfully submits that some of these markets of distribution, particularly the Ohio and Mississippi River Crossings, Virginia Cities and South Atlantic Ports, are natural gateways for the movement of traffic to and from territory beyond, and because of that fact are also used as basing points in the construction of rates on such traffic to and from points beyond.

By reason of the fact that all these markets of distribution are in competition with each other, and are served by many competing carriers and routes, including all rail, rail and water and all water carriers and routes, it has been, in the past, and is still, vitally essential that they be given freight rates on a plane of substantial equality, having due regard to the geographical location and physical advantages and disadvantages of each. The rates from the markets of distribution located on the Ohio and Mississippi River Crossings, to the Southeast, have borne a fixed and definite relation as between each other for many years, and a somewhat similar relationship has been maintained in adjusting the rates from said Ohio and Mississippi River Crossings, to the jobbing points and trade centers in the South as between each other. The same character of relationship has been maintained in adjusting the rates from the Eastern Seaboard and Interior Eastern points and from Virginia Cities, to said jobbing points and trade centers in the South. Likewise, a similar relationship has been maintained as between the Ohio and Mississippi River Crossings and the Eastern Seaboard and Virginia Cities in the adjustment of rates to said jobbing points and trade centers in the South. The relationship thus maintained

97 is such that any material change in the rates from the Ohio River, to the jobbing points and trade centers in the South, is immediately followed by a corresponding readjustment of the rates from the Eastern Seaboard and Virginia Cities to the same points of destination; and any material change in the rate to a given trade center or jobbing point is immediately followed by a readjustment of the rates from the same points of origin to the other trade centers and jobbing points in the South. This is so because these points are in constant competition with each other in supplying the consuming territory, and any unwarranted disparity in the adjustment of rates either to or from said points would result in undue and unnatural advantage on the one hand, and undue and unreasonable prejudice and disadvantage on the other. If the rates on grain and grain products from the various Ohio River Crossings, to Atlanta, Ga., are so adjusted as to give Louisville, for instance undue advantage over the other crossings, the difference, however slight, will determine the purchase, so far as the dealer at Atlanta is concerned, in favor of Louisville, to the exclusion of the other crossings. Similarly, if the rates from the Ohio River Crossings to Atlanta are so adjusted as to give that point an undue advantage over Augusta, or Montgomery, that difference, however slight, will enable Atlanta to encroach upon consuming territory that ought to be equally accessible to Augusta or Montgomery.

This principle of relative adjustment is the result of long years of strife and contention between the various points of distribution, and between various carriers serving such points of distribution; and commercial and industrial affairs have become so adjusted to and associated with it, that it could not be abrogated or altered in any material respect, without producing demoralization in all lines of business.

98 Competition Between Markets of Consumption.

This form of competition exists throughout the territory served by the lines of the petitioners, and, by reason thereof, carriers have been compelled to establish a low plane of rates on numerous commodities to both local and competitive points of consumption.

As instances thereof, the Louisville & Nashville Railroad Company has been compelled to establish low rates on cotton from the points of production and concentration, so that an adequate supply may be secured by the cotton factories at Alabama City, Anniston, Athens, Birmingham, Florence, Mobile, Montgomery, Munford, Prattville, Selma, Silura, Speigener, Sycamore, Sylacauga, Talladega, Ala.; Atlanta, Ball Ground and Canton, Ga.; New Orleans, La.; Covington, Henderson, Louisville and Maysville, Ky.; Columbia, Englewood, Humboldt, Knoxville, Memphis and Nashville, Tenn.; and at other points. It has also been compelled to establish rates from the principal points of manufacture in the North and East, to enable these mills to secure machinery and other necessary supplies on as favorable terms, compared with their competitors in other sections, as their physical situation will warrant.

It has also been compelled to establish low rates from its various mining districts, to enable those mills to secure an adequate supply of coal for fuel purposes.

For the same reason it is compelled to make low rates on ore and coke, and on fire brick, common brick, castings, boilers, machinery and other supplies necessary to the operation and maintenance of the various pig iron furnaces, rolling mills, and steel plants located on its lines.

For the same reason it has been compelled to make low rates on all forms of fertilizer material, including muriate, sulphate and nitrate of potash, ammonia, sulphate, nitrate of soda, phosphate rock, pyrites, dried blood and tankage, kainit, acid phosphate, sul-
99 phuric acid and filler material, from the sources of supply, to enable the manufacturers on its line to secure necessary raw materials in competition with manufacturers located elsewhere.

For the same reason it has been compelled to make low rates on cotton seed from the gin points and other available markets, to *enable* the cotton seed mills located at Birmingham, Brewton, Camden, Evergreen, Florence, Montgomery, Talladega, Prattville, and Selma, Ala.; Marianna and Pensacola, Fla.; Atlanta, Canton and Woodstock, Ga.; Louisville, Ky.; New Orleans, La.; Gulfport, Miss.; Brownsville, Memphis and Nashville, Tenn.; and numerous other points.

It has also been compelled to make low rates on wheat and corn, from producing districts on its own line, and on other lines, for the numerous millers located along its lines.

It has also been compelled to establish low rates on various raw materials for agricultural implement manufacturers at Belleville, Dahlgren, East St. Louis and Mt. Vernon, Ill., Ensley, Ala., Humboldt, Tenn., Maysville and Paris, Ky., and Mt. Vernon, Ind.; for bark extract manufacturers at Appalachia and Knoxville, Tenn., and Big Stone Gap and Olinger, Va.; for barrel, keg and tub manufacturers, at Belleville and East St. Louis, Ill., Carlisle, Lexington, London, Owensboro and Richmond, Ky., Ensley, Mobile and Montgomery, Ala., Memphis, Milan, Nashville and South Nashville and Trezevant, Tenn., and Mt. Vernon, Ind.; for basket manufacturers at Henderson, Ky., Humboldt, Knoxville, Memphis, Tenn., Montgomery, Ala., Pensacola, Fla.; for box and crate manufacturers at Castleberry, Mobile, Montgomery, Sylacauga and Thorsby, Ala., East Nashville, Knoxville, Memphis, Nashville and West Nashville, Tenn., Ford, Henderson and Winchester, Ky.; for brick manufacturers at Anniston, Bessemer, Birmingham, Castleberry, Coaldale, Cullman, Ensley, Gadsden, Georgiana, Graves Mines, Lacon, Mobile, Montgomery, Morris, New Decatur, Selma, Sheffield and Sylacauga, Ala.; for canning factories at Big Sandy, Tenn., Biloxi, Gulfport, Pass Christian and Scranton, Miss., Bowling Green, Central City, Hopkinsville, Junction City, La Grange, Latonia, Owensboro
100 and Sebree, Ky., Dunbar and Rigolets, La., Franklin, High Cliff, Humboldt, South Nashville and Tennessee Ridge, Tenn., Geneva, Orrville, Cullman, Thorsby, Brewton, Ala., and numerous other places; for car builders at Anniston, Gadsden, Ala., Knoxville, Tenn., and Mt. Vernon, Ill.; for distilleries at numerous points in Kentucky and Tennessee, for foundries and machine shops at numerous places in Alabama, Illinois, Kentucky, Tennessee, Mississippi, Georgia and Florida; for furniture manufacturers at Anniston, Birmingham, Cullman, Mobile, New Decatur, Sheffield, Talladega, Thorsby, and Woodlawn, Ala., Boston, Bowling Green, Frankfort, Henderson, Livermore, Owensboro and Sparta, Ky., Brownsville, East Nashville, Humboldt, Knoxville, Lawrenceburg, Memphis and Nashville, Tenn., Marietta and Talking Rock, Ga., and Murphy, N. C.; for glass bottle and fruit jar manufacturers at Belleville, Ill., East St. Louis, Ill., and Frankfort, Ky.; for handle manufacturers at Big Sandy, Erin, Jellico, Knoxville, Lesters, Nashville, Sylvia and Wales, Tenn., Bowling Green, Glasgow, Lyons and New Haven, Ky., Cullman, Decatur, Georgiana, Montgomery, Ala., Marianna, Fla., Mt. Vernon, Ill., and Ocoonita, Va.; for hemp factories at Lexington, Paris and Silver Creek, Ky.; for ice manufacturers at numerous points; for lime kilns at Bangor, Cobb City, Flint, Lagarde, Longview and Saginaw, Ala., Erin and Palmyra, Tenn.. and numerous other points; for mantel and grate manufacturers at Knoxville and Memphis, Tenn.; for marble and granite works at Ball Ground, Canton, Holly Springs, Marietta, Nelson and Tate, Ga., Carpenters, Friendsville, Knoxville, McMullens and Willards, Tenn., Gantt's Quarry, Ala., Kinsey and Murphy, N. C., and numerous

other places; for molasses manufacturers and refiners at Grand Ridge, Fla., Orange Grove, Miss., Montgomery, Ala., and other places; for phosphate rock miners at numerous points in the Mt. Pleasant district of Tennessee; for earthen pipe manufacturers at Gadsden and Sheffield, Ala.; for powder and dynamite manufacturers at Boyles, Ala., and Dossett, Tenn.; for sash, door and blind manufacturers at various points in Alabama, Mississippi, Florida, Georgia, Kentucky and Tennessee; for shuttle block manufac-
101 turers at Clarksville, Memphis and Knoxville, Tenn., Ellijay, Ga., and Murphy, N. C.; for soap manufacturers at Louisville and Lexington, Ky., Cincinnati, O., Nashville and Memphis, Tenn.; for stove and hollowware manufacturers at numerous points in Alabama, Tennessee and Illinois; for tanneries at Middlesboro, Ky., Big Stone Gap, Ky., Mineral Bluff, Ga., New Decatur, Ala., and Jellico, Tenn.; for tile manufacturers at Carmi and Equality, Ill., Bolton, Ga., Covington, Glasgow, Henderson, Hoertz, New Haven, Newport and Owensboro, Ky., Mt. Vernon, Ind.; for tobacco manufacturers at Clarksville, Franklin, Gallatin, Mitchellville, Nashville, Portland and St. Bethlehem, Tenn., Bowling Green, Covington, Falmouth, Guthrie, Hanson, Horse Cave, Lexington, Louisville, Maysville, Olmstead and Trenton, Ky., and numerous other places; for manufacturers of vehicles and vehicle material at Cullman, Florence, Mobile, Castleberry, Ala., Cumberland Gap, Memphis, Nashville, Brownsville, East Nashville, Gallatin, Humboldt, Knoxville, Stanton, Tenn., Cynthiana, Henderson, Owensboro, Louisville, Paris, Conway, Lebanon, Livermore, Madisonville, and Winchester, Ky.; for veneer manufacturers at Knoxville, Tenn., Mobile, and Sheffield, Ala.; and for woolen mills at Cumberland Gap, Knoxville, Nashville and Springfield, Tenn., Franklin, Ky., Evansville, Ind., and Marietta, Ga.

These industries are not only in competition in their respective lines with each other, but also with manufacturers located elsewhere throughout Southern territory and it is vitally essential to their successful operation that petitioner be permitted to continue present rates, bases and adjustments and to make such changes therein from time to time as the necessities of the particular industries concerned may require.

102 Competition Between Domestic Commodities.

This form of competition exists throughout the territory served by petitioner's lines in such degree of intensity as to compel, from time to time, the establishment of new rates and the readjustment of existing rates on very low planes.

As instances of its effect, it is respectfully submitted that the present rates on coal from various mining districts on the Louisville & Nashville Railroad to local stations on that line in Kentucky, Tennessee, Alabama, Mississippi, Louisiana and Florida were established a few years ago and made from 10 to 30 per cent less than the previous rates, for the purpose of inducing consumers of fuel to use coal in preference to wood.

The L. & N. R. R. Co. has also been compelled to make low rates on asphalt, produced at mines along Green River near Bowling Green, Ky., to Louisville, Ky., Cincinnati, O., St. Louis, Mo., and numerous other points, for the purpose of enabling said commodity to compete with brick, stone and granite for paving purposes, and with various materials for roofing purposes.

The L. & N. R. R. Co. has also been compelled to make low rates on brick to enable that commodity to compete with lumber for building purposes.

It has also been compelled to make low rates on marble from Georgia, Alabama and Tennessee quarries in all directions, to enable that commodity to compete with brick, stone and granite for building purposes.

It has also been compelled to make low rates on spent moulding sand, tobacco stems, and numerous other commodities competing with each other as a filler for fertilizer manufactured at numerous points on its lines.

It has been compelled to establish low rates on coke manufactured at ovens along its lines to enable such coke to compete with gas house coke and with Semet-Solvay and other bi-product coke
103 produced at various points. The countless number and variety of materials and products of the United States render it imperative in the making of freight rates, that a due regard be had to opportunities for substitution, whereby one commodity may be selected for a given use in preference to another, adapted to the same use, but involving a higher expenditure, either in transportation or other elements of cost.

There is competition between all of the different commodities adapted to the making of clothing, as a result of which the manufacture and consumption of cotton goods will be restricted if the cost thereof, including transportation, is abnormally high in comparison with woolen and other goods.

There is competition between the various articles of food consumption, as a result of which the use of one article will be restricted, if not prohibited, by its abnormal cost, including transportation in comparison with another article equally suited to the purpose.

There is competition between numerous commodities used for cleansing purposes, such as soap, soap powders, soap extracts, washing compounds, washing powders, etc.

There is competition between various fibers, such as cotton, hemp, sisal, manilla and jute, adapted to the manufacture of rope and twine; and there is also competition between rope made of vegetable fiber and rope made of wire; and competition between both kinds of rope and chain.

There is competition between different kinds of paper; between wrought iron pipe and cast iron pipe, and between metal pipe and earthen pipe; and there is competition between stoves, furnaces and radiators for heating purposes; and between other articles too numerous to mention.

The competition between commodities created by these opportunities for substitutes inevitably exerts an influence upon freight rates

on and over all lines of railroad in the Southern territory and elsewhere, because the cost of transportation is always a factor, and frequently, the controlling factor, in the price at which the consumer can afford to use a given commodity in preference to another that is adapted to his needs.

104 At the intermediate points involved in these various adjustments, petitioner states that there exists none of the competitive conditions which measure the rates applied at the longer distance points; wherefore, petitioner has applied, for many years, and desired, in the future, to apply to and from such intermediate stations, its just and reasonable local mileage scales of rates, except as modified by the aggregate of intermediate rates subject to the Act to Regulate Commerce.

105 Competition Between Domestic and Import Commodities.

The L. & N. R. R. Co. makes low rates on imported rough marble blocks or slabs from Gulf Ports to Ball Ground, Canton, Nelson and Tate, Ga., to enable the marble manufacturers at those points to obtain a quality of marble for special decorative and monumental work equal to that which is quarried in Vermont and New Hampshire.

It also makes rates on imported pyrites from Gulf ports to fertilizer factories at points along its lines, to enable them to secure material for the manufacture of sulphuric acid, whereas numerous other factories in Southern territory are able to secure their supply from domestic mines, located at Mineral City, Va., Villa Rica, Ga., Pyriton, Ala., and other points.

It makes rates on imported fertilizer material, embracing brimstone, carbonate of potash, German soda, grape pomace, kainit, manure salts, muriate of potash, nitrate of soda, nitre cake, sulphate of potash, sylvinite and sulphate of ammonia, from Gulf ports to various fertilizer manufacturing points on its lines to enable them to obtain articles necessary or desirable in the manufacture of fertilizer, in competition with the same and with other domestic commodities used for the same purpose.

It makes rates on imported cedar logs from Gulf ports to Knoxville, Tenn., in competition with cedar grown in the United States.

It makes rates on imported sodas, including soda ash, bi-carbonate of soda, bi-chromate, bi-sulphite, caustic, hypo-sulphite, phosphate, sal soda, saltpeter, silicate of soda, etc., from Gulf ports to Memphis, Tenn., in competition with the same articles manufactured in the United States.

It makes rates on imported ferro-manganese from Gulf ports to various furnace points in Alabama for the manufacture of

106 steel in competition with iron manufactured from the manganese ores mined in the United States.

It makes rates from Gulf ports on imported chrome ore, magnesite ore or clay, fluor spar, asphalt, copper ore, etc., to various points in competition with the same articles and with other articles adapted to the same purposes, produced in the United States.

It makes rates, in competition with the same commodities and with other articles adapted to the same purpose- produced in the United States, from Gulf ports to Colorado and Utah points, on imported alcohol; brandy; Cologne spirits; gin; high wines; whisky and liquors; bags and bagging; beer; bleach; enameled, pressed, paving and ornamental brick; terra cotta; building and roofing tile; fire brick; fire clay; canned goods; cement; dried fruits; ginger ale and mineral water; glass; pig iron; lead; linoleum; malt ale; iron and manganese ore; earth paint; paper; salt; seeds; sheep dip; soda; whiting; zinc and lead oxide.

It makes rates, in competition with the same articles and with other articles adapted to the same purposes produced in the United States, from Gulf ports to Missouri River points, on imported exalic acid; alcohol; bags; bagging; baskets; bleach; bottles; brick; burlaps; cement; chalk; cotton ties and buckles; crockery; fullers' earth; earthenware; ferro-manganese; figs; fluor spar; glassware; hemp; high wines; pig iron; red and white lead; pig lead; linoleum; magnesite clay and ore; nails; ochre; oil; paper; pitch; potash; pyrites; rags; salt; saltpeter; seeds; soda; tile; whisky; whiting; wood pulp; and zinc oxide.

It makes rates, in competition with the same articles and with other articles adapted to the same purposes, produced in the United States, from Gulf ports to Ohio and Mississippi River Crossings, Chicago, Indianapolis, Milwaukee, Minneapolis, Omaha, Salt Lake City, Sioux City, etc., on imported asphalt; beans; beeswax; bone ashes; bone dust; cabbage; cedar logs; walnut logs; chalk; cigars; cotton waste; cucumbers; egg plant; fresh fruits; garlic; grape fruit;
straw hats; hides; honey; spent lye; nitrate of soda; ochre;
107 onions; onyx; oranges; ore; paper; paper stock; peas;
pecans; pepper; pineapples; potatoes; salt; squash; tangerines; tobacco; tobacco stems; tomatoes; fresh vegetables; whiting; carbolic acid; muriate and sulphate of ammonia; soda ash; band iron; bar iron; muck or puddle bars; billets; asphalt paving blocks; blooms; glass bottles; canned goods; cement; chain; clay; cordage; oil cloth; crockery; earthenware; ingots; pig iron; iron pipe; scrap iron; jellies; preserves; lead; marble; mustard; nails; edible nuts; paint; pitch; wire rods; roofing composition; rope; sal ammonic; iron or steel slabs; tile slabs; sodium; scrap steel; pipe steel; talc; mineral water, and wire.

108 Competition Between Domestic and Export Commodities.

The L. & N. R. R. Co. makes rates from various points south of the Ohio and east of the Mississippi Rivers, to Gulf ports, on numerous commodities exported to Cuba, in competition with the same commodities moving in domestic commerce in the United States; such as dried fruits; car axles; wood axles; cotton backbands; bar iron; barley; grate baskets; bath tubs; beds; bedsteads; stove boards; boiler iron; boilers; bolsters; bolts; book cases; bran; buggies; bureaus; chimney caps; car bodies; plantation cars; car trucks; farm, lumber and logging carts; car wheels; chairs and chair stock; horse collars;

coon; corn meal; cotton fabrics; cottonseed, cake, hulls and meal; desks; doors; drain tile; mill feed; stock feed; felloes; grate fixtures; flour; filue fixtures; linings and tops; fruit jars; canned fruits, stove furniture, gas generators; grits; harness; hollowware; hominy; hosiery; hydrants; iron and steel articles; jug ware; lard; and lard compound; mattresses; nails; oats; packing house products; cast iron pipe; plate iron; gang and sulky plows; potatoes; iron and steel rails; refrigerators; rivets; red iron; roofing iron; sash; school seats; wheel scrapers; sheet iron or steel; shovels; spikes; staples. tables; tanks; track material; canned vegetables; wheat; and building material.

It makes rates from Ohio and Mississippi River Crossings and points beyond, to Gulf ports, on numerous commodities exported to Europe, Asia and Africa, in competition with the same articles moving in internal commerce; such as agricultural implements; zinc ashes; asphalt; beef extracts; binder twine; bottles; bran; clay; corn meal; corn oil; cotton linters; iron or steel drums; feathers; feed; fertilizer; flour; gasoline engines; grain and grain products; grass seed; handles; heading; logs; lumber; machinery; malted milk; mussel shells; oil cake; rope; sheep dip; shuttle blocks; silica; spelter; staves; tobacco; tobacco stems; traction engines;
109 twine; wagons; wind mills; wire rope; zinc ashes; skimmings;

Also on articles exported via Gulf ports to foreign countries other than Europe, Asia and Africa; such as agricultural implements; air compressors; ammonia; beer; beer tonics; bleach; brick; brooms; broom corn; cable; candles; cars; carts; cement; chairs; conduits; cotton linters; desks; eggs; excelsior; fertilizer; furniture; glass; grain and grain products; gypsum; handles; hay; heading; hoops; iron and steel articles; kegs; red and white lead; lime; flue lining; alcoholic liquor; locomotives; logs; lumber; machinery; malt; mineral waters; nails; oil; paint; paper; pipe; pitch; plaster; pumps; rail fastenings; rails; railroad rolling stock; rope; screws; shuttle blocks; seeds; starch; staves; stucco; tar; tile; tobacco; twine; varnish; vegetables; wind mills; wire rope.

110 The Desirability of Restoring and Preserving Relative Adjustments Which Have Been Disturbed by Reductions Made by State Legislatures and State Railroad Commissions in Rates Not Subject to the Act to Regulate Commerce.

In practically every State embraced in the territory in which petitioner's lines are located, there is, in addition to the legislative branch of government, a railroad commission, or other body, exercising the power to fix and regulate the rates, charges and practices of common carriers operating therein; and in many of such States schedules of maximum rates have been established, some by legislative enactment and others by *section* of railroad commissions and other regulating bodies. As has frequently occurred in the past, and as will occur in the future, intrastate rates and charges are established in the begin-ing and altered from time to time without regard to the extent to which relative adjustments, involving both intrastate and interstate rates, are or may be affected; and in all such cases, it is incum-

bent upon the carrier, either from its own necessities or the exigencies of the commerce and industry dependent upon it, to restore and preserve said relative adjustments by making revisions in the interstate rates involved corresponding with those made in the intrastate rates by force of State authority.

As instance of such exigencies, it is respectfully submitted that in the year 1907, the legislature of the State of Alabama enacted what are commonly known as the eight Group Acts, setting forth the rates thereafter to be charged by railroad companies for the transportation between points in Alabama, of a hundred or more commodities specified in said Acts. As to many of said articles, said rates were materially less than had previously been in effect upon the lines of the L. & N. Railroad Co. Believing its
111 existing rates to be just and reasonable, and that the reductions contemplated by said Acts were not justified by the conditions under which its business was necessarily being conducted, said L. & N. R. R. Co. obtained from the United States Circuit Court for the Middle District of Alabama a temporary injunction, restraining the enforcement of said legislative acts; but on appeal, the United States Circuit Court of Appeals for the Fifth District dissolved said order and required said L. & N. R. R. Co. to put said rates in force pending the litigation; and said rates were put in force on June 1, 1909.

This action brought about material reductions in the rates on a number of commodities to and from Mobile, Ala., and, to that extent, disturbed the relation that had for a long time existed as between Mobile, Ala., and New Orleans, La., and Pensacola, Fla.; and said L. & N. R. R. Co. was compelled to reduce the interstate rates on cotton from stations on its line in Alabama, to Pensacola, Fla., correspondingly with the reductions made in the intrastate rates from said stations to Mobile, Ala. No other revision has as yet been made, but, in the event said litigation is finally decided against said L. & N. R. R. Co., and the legislative rates to and from Mobile made permanent, it will be necessary to restore and preserve the relation of rates on all commodities existing prior to June 1st, 1909, as between Mobile, New Orleans and Pensacola.

For a great many years the L. & N. R. R. Co. made special low rates on distillers' grain and other supplies from Louisville, Ky., to numerous distilling points on its lines in the State of Kentucky, the shipments being billed at the full local rates from Louisville to destination and the special rates protected in claim settlements upon certificate being made that said articles had been used in the manufacture of whiskey for shipment over the L. & N. R. R. Co.'s lines. The Honorable Interstate Commerce Commission objected to that method of applying said special rates to interstate traffic and further held that the carrier had no right to dictate the use to which said articles must be put in order to enjoy said special rates. The interstate application of said rates was thereupon cancelled; and later, finding itself in the attitude of discriminating as be-
112 tween interstate and intrastate traffic between the same points, the L. & N. R. R. Co. also cancelled their intrastate

application. Thereupon, after complaint and hearing, the Kentucky Railroad Commission entered an order requiring said L. & N. R. R. Co. to restore the intrastate application of said rates; and the L. & N. R. R. Co. appealed to the Federal Court to restrain the enforcement of said order, and the proceedings are now pending in the United States Circuit Court for the Eastern District of Kentucky. In the event said litigation is finally terminated in favor of the Kentucky Railroad Commission, the L. & N. R. R. Co. will be forced either to discriminate as between interstate and intrastate traffic between the same points, or to apply the said rates so fixed by the Kentucky Railroad Commission to both intrastate and interstate shipments from Louisville to said distillery points in the State of Kentucky.

It is further submitted that Cincinnati, O., Covington, Newport, Louisville, Owensboro and Henderson, Ky., and Evansville, Ind., are in competition with each other for the trade of the numerous small cities and towns located upon the lines of the Louisville & Nashville Railroad in the State of Kentucky, and, as a result of said competition, a substantial parity of rates has for many years been maintained in the rates to and from said cities. If the rates from Covington, Newport, Louisville, Owensboro and Henderson, Ky., to said stations in Kentucky,—which rates are subject to the jurisdiction of the Kentucky Railroad Commission,—should be materially reduced, corresponding reductions would necessarily have to be made in the interstate rates between Cincinnati, O., and Evansville, Ind., and said points, in order to restore the relation previously existing.

It is further submitted that the rates from Savannah and Brunswick, Ga., to all points of destination in that State are subject to the jurisdiction of the Railroad Commission of Georgia. The rates from Savannah and Brunswick to common and basing points in Georgia bear a fixed and definite relation to Charleston, Beauford, Port Royal, S. C., and other South Atlantic ports, which, in
113 turn, bear a fixed and definite relation to the Virginia gateways, and the latter bear a fixed and definite relation to the Ohio and Mississippi River Crossings. These fixed and definite relations are such that, in the event any material reduction were made by the Georgia Railroad Commission in the rates from Savannah and Brunswick to common and basing points in Georgia, it would be necessary for the carriers involved to make corresponding reductions from South Atlantic ports, Virginia gateways and Ohio and Mississippi River Crossings in order to restore and preserve said relations.

114 Desirability of Restoring and Preserving Relative Adjustments Destroyed by the Interstate Commerce Commission in Fixing Rates Between Two or More but Not All of the Points that May Be Involved in Said Relative Adjustment.

A fixed and definite relation exists as between all of the Ohio and Mississippi River Crossings in the adjustment of rates therefrom to common and basing points in the Southeast, and, in the event the

Honorable Commission should enter an order reducing the rate from any one of said crossings it would be necessary to readjust the rates from all the other crossings in order to restore and preserve said relation. In this connection, reference is made to the order of the Honorable Commission in the case of the Receivers and Shippers Association of Cincinnati, Ohio, versus Cincinnati, New Orleans & Texas Pacific Railway Company, et al., 18th I. C. C. 440, in which certain reductions were made in the class rates from Cincinnati, Ohio, to Chattanooga, Tenn. The rates from Louisville, Ky., and other Ohio and Mississippi River Crossings, were not involved in said case, but the carriers concerned were compelled to readjust their rates from Louisville and other Ohio and Mississippi River Crossings to Chattanooga in order to restore and preserve the relation previously existing as between Cincinnati and said other Ohio and Mississippi River Crossings.

It is respectfully submitted that the desirability for restoring and preserving relative adjustments arises not merely from the interests of the carriers themselves but mainly from the necessity of preventing disturbance of trade relations built up and long maintained by virtue of said relative readjustment.

115 Public Desirability of Establishing and Maintaining Group or Territorial Adjustments Where Blanket Rates Effect Equality in a Common Marke*d* as Between Widely Separated Points of Production and Supply.

Group or territorial adjustments are employed throughout the country for the purpose of enabling manufacturers and producers to reach a common market upon terms of substantial equality with all competing *with* manufacturers and producers. Such adjustments necessarily ignore distance to a considerable extent, because if the rates were measured solely by length of haul, those manufacturers and producers farthest removed would be debarred from competition, to their own detriment as well as of consumers and carriers.

As illustrative of the ends to which such adjustments are applied, it is respectfully submitted that — coal mines located on the Louisville & Nashville R. R. in Southeastern Kentucky, Tennessee and Virginia compete in the large consuming territory in Indiana, Illinois, Michigan and Ohio, with mines in the Kanawha and New River districts of the C. & O. Railway, the Thacker and Pocahontas districts of the Norfolk & Western, the Fairmont and Cumberland-Piedmont districts of the Baltimore & Ohio, and the Pennsylvania districts of the Pennsylvania System; and in view of that competition, and the groupings employed by said C. & O. Ry. Co. and other lines, it is necessary to divide said L. & N. mines, which lie in a sort of triangular territory extending from East Bernstadt, Ky., to Norton, Va., a distance of about 140 miles, and from Corbin, Ky., to Wind Rock, Tenn., a distance of about 92 miles, into two groups, characterized as No. 1 and No. 2, and to establish therefrom rates corresponding with the Kanawha and New River and other dis-

tricts previously mentioned. The result of this grouping is
116 that the same rate is applied from East Bernstadt, Ky., as from Pennington, Va., notwithstanding East Bernstadt is about 100 miles nearer the consuming territory.

Similarly, on coke from L. & N. Virginia ovens, to territory north of the Ohio river, it has been necessary to observe the same totals as are employed from Connellsville, Pa., the result being that the same rate is applied from all of said ovens without regard to difference in distance, although such differences in this case are not as wide as in the coal rate adjustment.

On coal from Western Kentucky mines on the Henderson and Owensboro & Nashville Divisions of the L. & N. R. R. Co., to Memphis, Tenn., the competition of Pennsylvania and West Virginia coal transported by barges down the Ohio and Mississippi Rivers, and of coal brought in by rail from Illinois and Alabama districts, has forced the adoption of the same rate from all of said mines, notwithstanding considerable differences in distance. This is so because Memphis is the largest market available to said mines and access to it is vitally necessary to their successful operation. If the rates were measured solely by the distance those mines farthest removed would be debarred from the competition.

Similarly, competition with Tennessee mines located on the Nashville, Chattanooga & St. Louis and Tennessee Central roads has compelled the application of the same rate from all of said Western Kentucky mines to Nashville, Tenn.; competition with river coal, and with rail coal brought in by other lines, has compelled the application of the same rate on coal from all L. & N. Alabama mines, to New Orleans, La.

Competition with other districts and with other carriers has compelled the application of group or blanket rates on lumber from all producing points in the South, to the territory on and beyond the Ohio and Mississippi Rivers.

Competition with other districts and with other carriers has compelled the establishment of group or blanket rates on fruits and vegetables from producing districts in the South to the territory north of the Ohio River.

Competition with New England factories and trunk line
117 carriers has compelled the establishment of group or blanket rates on cotton factory products from Georgia, Alabama and Carolina mills to the large consuming territory north of the Ohio River, including Chicago, Indianapolis, Milwaukee, etc.

Competition with other districts and other carriers has compelled the establishment of group or blanket rates on naval stores, embracing rosin and turpentine, from producing territory in the South to the Ohio River and beyond.

Competition with Northern and Eastern producers has compelled the establishment of group or blanket rates on pig iron, steel and cast iron pipe from Southern furnaces, to the Ohio river and territory beyond.

It is respectfully submitted that said group or territorial adjustments are not confined to specific commodities, but are frequently

employed in the adjustment of general class and commodity rates, as may be seen from the fact that, for the purpose of making rates to Mississippi River points, the territory north of the Ohio river is divided into six groups, numbered A to F inclusive, the boundaries of which are, substantially, as follows:

Indianapolis Territory. From points on and south of the C. H. & D. Ry., beginning at a point on the Illinois-Indiana State line, to and including Indianapolis; thence east via the P. C. C. & St. L. Ry. through New Paris to Dayton; thence via the C. C. C. & St. L. Ry. to Springfield; thence via the D. T. & L. Ry. to Washington Court House; thence via the C. H. & D. Ry. to Mussellman's; thence via the C. H. & D. Ry. to and including Ironton and Portsmouth, O., and Ashland, Ky. (with exception named below) also including Wellston, O.; thence via the north bank of the Ohio River (not including Cincinnati, and Jeffersonville) to a point just north of New Albany; thence on the line of the C. I. & L. Ry. to its junction with the B. & O. S. W. Ry. at Mitchell, Ind.; thence via the B. & O. S. W. Ry. to but not including Vincennes; thence north via the Indiana-Illinois State line to the point of beginning.

Exception. From Aurora and Lawrenceburg, Ind., Cincinnati rates will apply.

The rates from Indianapolis Group will also apply from
118 the following points, viz: Chesapeake & Ohio Railway, viz:
Stations between Kenova, W. Va., and Fort Thomas, Ky. (except Ashland, Ky., Ironton and Portsmouth, Ohio, on iron articles, including nails but not including iron or steel rails).

Ft. Wayne-Columbus Territory. From points north of the boundary line of Group A, east of the Indiana-Illinois State line, south of Lake Michigan and the Michigan State line to its intersection with the Indiana-Ohio State line (but including points on and south of the Michigan Central R. R. from New Buffalo to South Bend via Niles); thence via that line to where it is crossed by the B. & O. R. R.; thence south of the line of the B. & O. R. R. east through Defiance and Deshler; thence south of the line of the C. H. & D. Ry. to Findlay; thence south of the line of the C. C. C. & St. L. Ry. to Carey; thence south of the Northern Ohio Ry. to Sycamore; thence south of the line of the T. & O. C. Railway to Bucyrus; thence south of the line of the P. F. W. & C. Ry. to Mansfield; thence west of the line of the B. & O. R. R. through Mt. Vernon, Newark, Junction City and Clouster; thence west of the Kanawha & Michigan Ry. to and including Athens; thence via an imaginary line to a point on the north bank of the Ohio River just east of Pomeroy, following the north bank of the Ohio River to the point of intersection with Group No. 1.

Vincennes Territory. Except as hereinafter named, Vincennes territory is described as follows: Beginning at Vincennes, Ind., thence south of the line of the B. & O. S. W. Ry. to but not including Mitchell, Ind.; thence south of the C. I. & L. Ry. to New Albany, Ind.; thence west of and including the main line of the Southern Railway to the Indiana-Illinois State line (including points on the branches of the Southern Ry. from Jasper to but not including

Evansville, Ind., Lincoln City to Rockport, Ind., inclusive, and from Lincoln City to Cannelton inclusive); thence via that line to the point of beginning.

Evansville Territory. East of the Indiana-Illinois State line, south and west of the boundaries of Group C and on the north bank of the Ohio River, except as provided for in Group C.

119 Detroit-Toledo Territory. North of the Northern boundary line of Group B, east of Lake Michigan and following the eastern boundary of the lake to and including Montague; thence beginning at Muskegon, following the line of the T. S. & M. Ry. to Sheridan; thence north and east along the line of the D. G. R. & W. R. R. via Edmore to Saginaw; thence north to and including Bay City and West Bay City; thence via the Michigan Central R. R. to Vassar (including Caro); thence via the F. & P. M. R. R. Co. to Port Huron; thence via the eastern boundary of Michigan to its intersection with the northern boundary of Ohio; thence south of Lake Erie to but not including Sandusky; thence west of a line drawn from Sandusky west of the B. & O. R. R. through Chicago Junction to Mansfield.

Buffalo-Pittsburgh Territory. Beginning at Sarnia, Ont., thence via Kings Court Junction to London, Ont.; thence via the main line of the Grand Trunk Ry. System to Suspension Bridge, Can.; thence via Suspension Bridge, N. Y., La Salle, Tonawanda, Black Rock, International Junction, East Buffalo to Buffalo, N. Y.; thence south of the line of the Buffalo, Rochester & Pittsburgh Railway, Buffalo to Bradford (not including Bradford); thence south of the Buffalo & Allegheny Valley Division of the Pennsylvania Railroad, Bradford to Morrison (not including Bradford or Morrison); thence on and south of the Buffalo & Allegheny Valley Division of the Pennsylvania Railroad to Pittsburgh; thence via the Baltimore & Ohio Railroad to Wheeling, W. Va.; thence via both banks of the Ohio River to the intersection with the boundary of Group B; thence east of the boundary line of Group B, to and including Mansfield, O.; thence easter of the eastern boundary of Group E to Sandusky, O. (including Sandusky).

X.

Petitioner, Louisville & Nashville Railroad Company, states that it was originally chartered to construct a railroad from Louisville, Ky., to Nashville, Tenn., with a branch to Lebanon, Ky., and one from a point five miles south of Bowling Green, Ky., to 120 the Kentucky-Tennessee State line, near a point now known as Guthrie, Ky., in the direction of Clarksville and Memphis, Tenn. Construction was commenced from Louisville southward in 1853, and from Nashville northward in 1856, and work progressed from each end until connection was made at or near Bells Taven (now Glasgow Junction) in the year 1859.

The Lebanon Branch was extended from time to time and completed to Rock Castle River, a distance of 140 miles from Louisville, in 1870, and was further extended to Jellico, Tenn., in 1883, connecting with the Knoxville & Ohio Railway.

The Memphis Branch was completed in 1860.

The Louisville & Nashville Railroad Company acquired by lease the property of the Memphis & Ohio Railway Company in September, 1867, and of the Memphis, Clarksville & Louisville Railroad Company on October 1st, 1871, which properties in connection with its existing railroad served to form a continuous line from Louisville, Ky. to Memphis, Tenn.

On July 1st, 1872, the Louisville & Nashville Railroad Company acquired, by lease, control of the Nashville & Decatur Railroad Company, extending from Nashville, Tenn., to Decatur, Ala., 122 miles.

In the same year it acquired control of the South & North Alabama Railroad Company, extending from Montgomery, Ala., to Decatur, Ala.

In 1880 it acquired by purchase*d*, the property of the Mobile & Montgomery Railroad Company, extending from Montgomery, Ala., to Mobile, Ala., 180 miles.

In the same year it purchased the property of the New Orleans & Mobile Railroad Company, extending from Mobile, Ala., to New Orleans, La., 141 miles.

In the same year it purchased the Pensacola Railroad, extending from Pensacola Junction, (now Flomaton) Ala., to Pensacola, Fla., 43 miles.

In 1879 it purchased the property of the Evansville, Henderson & Nashville Railroad Company, extending from Henderson, Ky., to Nashville, Tenn., 145 miles.

In 1881 it acquired control of the Southeast & St. Louis
121 Railway and Branches, extending from Evansville, Ind., to East St. Louis, Ill., 161½ miles, and from McLeansboro, Ill., to Shawneetown, Ill., 40 miles.

In 1880 it purchased a controlling interest in the Owensboro & Nashville Railroad Company and extending from Owensboro to Central City, Ky., 35½ miles, and thereafter furnished means to extend the same from Central City to Adairville, Ky., 84 miles in all.

In 1881 it purchased the property of the Louisville, Cincinnati & Lexington Railroad Company, extending from Louisville, Ky. to Lexington, Ky., 94 miles, and from La Grange, Ky. to Cincinnati, O., 83 miles, and thereby secured control by lease of three smaller corporations.

The Pensacola & Atlantic Division, extending from Pensacola to River Junction, Fla., 161 miles, was completed in 1883.

The Alabama Mineral Division, 119 miles, formed by the consolidation of the Anniston & Atlantic and Anniston & Cincinnati Railroads and supplemented by an extension from Sylacauga, Ala., to the L. & N. main line at Calera, Ala., was acquired by purchase in 1903, although it had been under the control, throug- stock ownership and otherwise, of the L. & N. R. R. Co. for many years prior thereto.

In 1903 trackage rights were acquired over the line of the Atlanta & Birmingham Air line from Wellington, Ala., to Cartersville, Ga., a distance of 78 miles.

The Alabama & Florida Division, extending from Georgiana, Ala., to Graceville, Fla., 100 miles, was constructed at intervals between 1899 and 1902; and the branch from Duvall, Ala., to Paxton, Fla., 23 miles, was built in 1903.

The Yellow River Branch, extending from Florala, Ala., to Crestview, Fla., 26 miles, was acquired in 1904.

The Southern Alabama Division, extending from Flomaton, Ala., to Selma, Ala., 112 miles, was completed in 1899 by the construction of a 40 mile line to connect up the old Pensacola & Selma Upper and Pensacola & Selma Lower Divisions.

The Camden Branch, 17 miles, and the Myrtlewood Branch, 60 miles, were completed in 1901.

122 The Nashville, Florence & Sheffield Division, 87 miles, was acquired by purchase in 1900 but had been under the control of the L. & N. R. R. Co. for many years before that time.

The Cumberland Valley Division, 119 miles, from Corbin, Ky., to Norton, Va., was constructed at intervals between 1888 and 1891.

The Kentucky Division and branches, aggregating about 250 miles, were acquired in 1891.

The line from Saxton, Ky., to Knoxville, Tenn., 78 miles, was constructed in 1904-5.

The Atlanta, Knoxville & Northern Railway, from Knoxville, Tenn., to Marietta, Ga., about 225 miles, was acquired in 1902, and the cutoff from Etowah, Tenn., to Cartersville, Ga., 88 miles, completed in 1904. About the same time trackage rights were secured over the N. C. & St. L. Ry., from Cartersville, Ga., to Atlanta, Ga., 48 miles.

In the last few years, the L. & N. R. R. Co. has acquired through purchase, construction or otherwise, the Morganfield Branch, 26 miles; the Madisonville, Hartford & Eastern Branch, 53 miles; the Frankfort & Cincinnati Railway, 40 miles; the Louisville & Atlantic Railroad, 104 miles; the Chesapeake & Nashville Railway, 50 miles; and the Lexington & Eastern Railway, 93 miles.

The Birmingham Mineral Division, which consists of about 265 miles of short mineral branches, has been constructed at intervals since 1884.

The total mileage operated by the Louisville & Nashville Railroad Company on June 30, 1910 was 4,590.55 miles.

In addition, it now possesses financial interest in, but does not operate, many other lines of railroad not included in the mileage above stated, a full and accurate statement of which is contained in the annual reports of the Louisville & Nashville Railroad Company on file with the Interstate Commerce Commission, to which reports petitioner, Louisville & Nashville Railroad Company, hereby makes reference.

Petitioner, Louisville & Nashville Railroad Company, further states that shortly after the passage of the Act to Regulate Commerce of February 4th, 1887, it submitted to the Interstate Com-

merce Commission a petition for exemption from the pro-
123 visions of the Long and Short Haul clause of the Fourth Section of said Act to Regulate Commerce, and refers to, and makes a part hereof, the said petition and the proceedings had thereon, as reported in pp. 31, et seq., of Vol. 1, Interstate Commerce Commission reports; that upon all the mileage now operated by it, and upon all the mileage in which it possesses financial interest but does not operate, a considerable volume of freight traffic subject to the provisions of the Act to Regulate Commerce and to the jurisdiction of the Interstate Commerce Commission has been, is now and will continue to be transported under all the conditions set forth in said petition of the Louisville & Nashville Railroad Company as justifying its exemption from said Long and Short Haul clause, and that there are also numerous other conditions which have arisen since the former petition was filed, and which now justify the exemption of petitioner from the provisions of the said Long and Short Haul clause; that while at the time of the passage of the Act to Regulate Commerce, February 4th, 1887, the total length of lines under control, by ownership of stock or operated under lease by the Louisville & Nashville Railroad Company, was 2,106.64 miles, the total mileage operated on June 30th, 1910, was 4,590.55 miles; that the operated mileage lies in the States of Missouri, Indiana, Illinois, Ohio, Kentucky, Virginia, North Carolina, Tennessee, Georgia, Alabama, Florida, Mississippi and Louisiana; that the railroad mileage in the territory traversed by petitioner's lines has greatly increased since the passage of the Act to Regulate Commerce in 1887, and that the effect of this increase has been to greatly intensify the competition that existed in 1887, when relief from the Long and Short Haul clause was granted to petitioner, Louisville & Nashville Railroad Company.

Petitioners, Athens & Tellico Railway Company, Louisville & Atlantic Railroad Company and Wasioto & Black Mountain Railroad Company state that they are subsidiaries of the Louisville & Nashville Railroad Company, and that all of their interstate traffic is necessarily conducted under all of the conditions herein set forth as affecting and controlling the interstate traffic of said Louisville & Nashville Railroad Company.

124 Petitioners, Brush Creek Railroad Company, Carrollton & Worthville Railroad Company, Cincinnati, Flemingsburg & Southeastern Railroad Company, Hayneville & Montgomery Railroad Company, Kentucky Highlands Railroad Company, Manistee & Repton Railroad Company, Marbury & Kingston Railroad Company, Marianna & Blountstown Railroad Company, Pascagoula Street Railway & Power Company, and Tennessee & Cumberland River Railroad Company, state that, having no other rail connection, all of their interstate traffic is necessarily handled in connection with the Louisville & Nashville Railroad Company and under all the conditions herein set forth as affecting and controlling the interstate traffic of said Louisville & Nashville Railroad Company.

Petitioner, Lexington & Eastern Railway Company states that

while it has other connections than the Louisville & Nashville Railroad Company, all of its interstate traffic is necessarily conducted under all the conditions herein set forth as affecting and controlling the interstate traffic of said Louisville & Nashville Railroad Company.

XI.

Petitioner files herewith exhibits, as described below, containing citations by I. C. C. numbers to tariffs in which are published rates made on the principles, bases and adjustments hereinbefore set forth, the continuance of which principles, bases and adjustments is desired.

Petitioner respectfully states that said exhibits are complete as to tariffs issued by it and in its behalf as an initial carrier, but are not complete as to tariffs, issued by other lines and agents of other lines, in which petitioner is shown as a participating carrier; that petitioner is not advised of the full extent to which its participating concurrences have been made use of by such other lines and their agents, and the data is not obtainable within the time for filing this application:—Nevertheless, as to all such tariffs, insofar as they contain rates made on the principles, bases and adjustments hereinbefore set forth, petitioner prays for all necessary relief just as though said tariffs were specifically enumerated in said exhibits.

125 Description of Exhibits Referred to in Section XI.

For petitioner Louisville & Nashville Railroad Company:

No. 1. List of tariffs issued by the Louisville & Nashville Railroad Company, which include interstate rates affected by the long and short haul provision of the Act to Regulate Commerce, as amended June 18, 1910.

No. 2. List of tariffs issued by agents for account of the Louisville & Nashville Railroad Company, which include interstate rates affected by the Long and Short Haul provision of the Act to Regulate Commerce, as amended June 18, 1910.

No. 3. List of tariffs issued by foreign roads for account of the Louisville & Nashville Railroad, which include interstate rates affected by the long and short haul provision of the Act to Regulate Commerce, as amended June 18, 1910.

No. 4. List of tariffs issued by the Louisville & Nashville Railroad for account of other lines, which include interstate rates affected by the Long and Short Haul provision of the Act to Regulate Commerce, as amended June 18, 1910.

No. 5. List of tariffs of foreign roads or agents applying from Buffalo-Pittsburgh points, eastern cities, interior eastern and New England points to southeastern points showing the Louisville & Nashville Railroad as a participating carrier, which include interstate rates affected by the Long and Short Haul provision of the Act to Regulate Commerce, as amended, June 18, 1910.

No. 6. List of tariffs of foreign roads showing the Louisville & Nashville Railroad as a participating carrier, which include inter-

state rates affected by the long and short haul provisions of the Act to Regulate commerce, as amended, June 18, 1910.

No. 7. List of tariffs issued by agents for account of foreign roads, showing the Louisville & Nashville Railroad as a participating carrier, which include interstate rates affected by the long and
126 short haul provision of the Act to Regulate Commerce, as amended June 18, 1910.

For petitioner Athens & Tellico Railway Company:

No. 8. List of tariffs issued by the Louisville & Nashville Railroad for account of the Athens & Tellico Ry., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 9. List of tariffs issued by agents for account of the Athens & Tellico Ry., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 10. List of tariffs issued by foreign roads for account of the Athens & Tellico Ry., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 11. List of tariffs issued by agents for account of foreign roads in which the Athens & Tellico Ry. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 12. List of tariffs of foreign roads, in which the Athens & Tellico Ry. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Brush Creek Railroad Company:

No. 13. List of tariffs issued by the Louisville & Nashville Railroad for account of the Brush Creek Railroad, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 14. List of tariffs issued by agents for account of the Brush Creek Railroad, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

127 No. 15. List of tariffs of foreign roads in which the Brush Creek Railroad is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Carrollton & Worthville Railroad Company:

No. 16. List of tariffs issued by the Louisville & Nashville Railroad for account of the Carrollton & Worthville Railroad, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 17. List of tariffs issued by agents for account of the Carrollton & Worthville Railroad, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 18. List of tariffs issued by foreign roads for account of the

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Carrollton & Worthville Railroad, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 19. List of tariffs issued by agents for account of foreign roads in which the Carrollton & Worthville Railroad is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 20. List of tariffs of foreign roads in which the Carrollton & Worthville Railroad is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Cincinnati, Flemingsburg & Southeastern Railroad Company:

No. 21. List of tariffs issued by the Louisville & Nashville Railroad for account of the Cincinnati, Flemingsburg & Southeastern R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 22. List of tariffs issued by agents for account of the Cincinnati, Flemingsburg & Southeastern R. R., which include
128 interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 23. List of tariffs issued by agents for account of foreign roads in which the Cincinnati, Flemingsburg & Southeastern R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 24. List of tariffs of foreign roads in which the Cincinnati, Flemingsburg & Southeastern R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Hayneville & Montgomery Railroad Company:

No. 25. List of tariffs issued by the Louisville & Nashville Railroad for account of the Hayneville & Montgomery R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 26. List of tariffs issued by agents for account of the Hayneville & Montgomery R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 27. List of tariffs issued by agents for account of foreign roads in which the Hayneville & Montgomery R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 28. List of tariffs of foreign roads in which the Hayneville & Montgomery R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Kentucky Highlands Railroad Company:

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No. 29. List of tariffs issued by the Louisville & Nashville Railroad for account of the Kentucky Highlands R. R., which include
129 interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 30. List of tariffs issued by agents for account of the Kentucky Highlands R. R., which include interstate rates affected by the long and short Haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 31. List of tariffs issued by foreign roads for account of the Kentucky Highlands R. R., which include interstate rates affected by the long and short Haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 32. List of tariffs of foreign roads in which the Kentucky Highlands R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Lexington & Eastern Railway Company:

No. 33. List of tariffs issued by the Lexington & Eastern Ry., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 34. List of tariffs issued by agents for account of the Lexington & Eastern Ry., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 35. List of tariffs issued by foreign roads for account of the Lexington & Eastern Ry., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 36. List of tariffs issued by agents for account of foreign roads showing the Lexington & Eastern Ry. as a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 37. List of tariffs of foreign roads showing the Lexington & Eastern Ry. as a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to
130 regulate commerce, as amended June 18, 1910.

For petitioner Louisville & Atlantic Railroad Company:

No. 38. List of tariffs issued by the Louisville & Atlantic R. R., which include interstate rates affected by the Long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 39. List of tariffs issued by agents for account of the Louisville & Atlantic R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 40. List of tariffs issued by foreign roads for account of the Louisville & Atlantic R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 41. List of tariffs issued by agents for account of foreign roads showing the Louisville & Atlantic R. R. as a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 42. List of tariffs of foreign roads showing the Louisville & Atlantic R. R. as a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Manistee & Repton Railroad Company:

No. 43. List of tariffs issued by the Louisville & Nashville Railroad for account of the Manistee & Repton R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 44. List of tariffs issued by agents for account of the Manistee & Repton R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

131 No. 45. List of tariffs issued by foreign roads for account of the Manistee & Repton R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 46. List of tariffs issued by agents for account of foreign roads in which the Manistee & Repton R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 47. List of tariffs of foreign roads in which the Manistee & Repton R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner the Marbury & Kingston Railroad Company:

No. 48. List of tariffs issued by the Louisville & Nashville Railroad for account of the Marbury & Kingston R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 49. List of tariffs issued by agents for account of the Marbury & Kingston R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Marianna & Blountstown Railroad Company:

No. 50. List of tariffs issued by the Louisville & Nashville Railroad for account of the Marianna & Blountstown R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 51. List of tariffs issued by agents for account of the Marianna & Blountstown R. R., which include interstate rates affected by the long and short haul provision of the Act to Regulate commerce, as amended June 18, 1910.

132 For petitioner Pascagoula Street Railway & Power Company:

No. 52. List of tariffs issued by the Louisville & Nashville Railroad for account of the Pascagoula Street Railway & Power Company, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 53. List of tariffs issued by agents for account of the Pascagoula Street Railway & Power Company, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 54. List of tariffs issued by agents for account of foreign roads in which the Pascagoula Street Railway & Power Company is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 55. List of tariffs of foreign roads in which the Pascagoula Street Railway & Power Company is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Tennessee & Cumberland River Railroad Company:

No. 56. List of tariffs issued by the Louisville & Nashville Railroad for account of the Tennessee & Cumberland River R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 57. List of tariffs issued by agents for account of the Tennessee & Cumberland River R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 58. List of tariffs issued by agents for account of foreign roads in which the Tennessee & Cumberland River R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

133 No. 59. List of tariffs of foreign roads in which the Tennessee & Cumberland River R. R. is a participating carrier, which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

For petitioner Wasioto & Black Mountain Railroad Company:

No. 60. List of tariffs issued by the Louisville & Nashville Railroad for account of the Wasioto & Black Mountain R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 61. List of tariffs issued by agents for account of the Wasioto & Black Mountain R. R., which include interstate rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

No. 62. List of tariffs of foreign roads in which the Wasioto & Black Mountain R. R. is a participating carrier, which include inter-

state rates affected by the long and short haul provision of the Act to regulate commerce, as amended June 18, 1910.

Dated at Louisville, Kentucky, this 14th day of December, 1910.

Respectfully submitted,

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

By A. R. SMITH, *Third Vice-President.*

ATHENS & TELLICO RAILWAY COMPANY,
BRUSH CREEK RAILROAD COMPANY,
CARROLLTON & WORTHVILLE RAILROAD COMPANY,
CINCINNATI, FLEMINGSBURG & SOUTHEASTERN RAILROAD COMPANY,
HAYNEVILLE & MONTGOMERY RAILROAD COMPANY,
134 KENTUCKY HIGHLANDS RAILROAD COMPANY,
LEXINGTON AND EASTERN RAILWAY COMPANY,
LOUISVILLE & ATLANTIC RAILROAD COMPANY,
MANISTEE & REPTON RAILROAD COMPANY,
MARBURY & KINGSTON RAILROAD COMPANY,
MARIANNA & BLOUNTSTOWN RAILROAD COMPANY,
PASCAGOULA STREET RAILWAY & POWER COMPANY,
TENNESSEE & CUMBERLAND RIVER RAILROAD COMPANY,
WASIOTO & BLACK MOUNTAIN RAILROAD COMPANY,

By A. R. SMITH, *Agent Under Powers of Attorney.*

A. R. Smith states that he is Third Vice President of the Louisville & Nashville R. R. Co., and Agent, by virtue of powers of attorney hereto attached, for the Athens & Tellico Railway Company, the Brush Creek Railroad Company, Carrollton & Worthville Railroad Company, Cincinnati, Flemingsburg & Southeastern Railroad Company, Hayneville & Montgomery Railroad Company, Kentucky Highlands Railroad Company, Lexington & Eastern Railway Company, Louisville & Atlantic Railroad Company, Manistee & Repton Railroad Company, Marbury & Kingston Railroad Company, Marianna & Blountstown Railroad Company, Pascagoula Street Railway & Power Company, Tennessee & Cumberland River Railroad Company, Wasioto & Black Mountain Railroad Company; and that the matters set forth in the foregoing application are true.

A. R. SMITH.

89

Sworn to and subscribed before me this 14th day of December, 1910. My Commission expires the 24th day of January, 1914.

G. W. B. OLMSTEAD,
Notary Public, Jefferson County, Ky.

135 The Athens & Tellico Railway Company, by Jas. B. Wright, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Athens & Tellico Railway Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Athens & Tellico Railway Company and in his own name as agent for the Athens & Tellico Railway Company.

Dated at Knoxville, Tennessee, this 9th day of December, 1910.

ATHENS & TELLICO RAILWAY COMPANY,
By JAS. B. WRIGHT, *President.*

136 The Brush Creek Railroad Company, by John H. Jones, its President and authorized Agent, hereby appoints and constitutes A. R. Smith, its attorney in fact for the purpose of submitting to the Inter-state Commerce Commission the application of the Brush Creek Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Brush Creek Railroad Company and in his own name as agent for the Brush Creek Railroad Company.

Dated at Pittsburgh, Pa., this 16th day of December, 1910.

BRUSH CREEK RAILROAD COMPANY,
By JOHN H. JONES.

Witness:
J. H. PRICE.

137 The Carrollton & Worthville Railroad Company by Jas. Gayle, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Carrollton & Worthville Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Carrollton & Worthville Railroad Company and in his own name as agent for the Carrollton & Worthville Railroad Company.

Dated at Carrollton, Kentucky, this 8 day of December, 1910.

CARROLLTON & WORTHVILLE RAILROAD COMPANY,
By JAS. GAYLE, *President.*

Witness:
MARY MASTERSON.

138 The Cincinnati, Flemingsburg & Southeastern Railroad Company, by S. S. Bush, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Cincinnati, Flemingsburg & Southeastern Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Cincinnati, Flemingsburg & Southeastern Railroad Company and in his own name as agent for the Cincinnati, Flemingsburg & Southeastern Railroad Company.

Dated at Louisville, Kentucky, this 7 day of December, 1910.

CINCINNATI, FLEMINGSBURG & SOUTHEASTERN RAILROAD CO.,
By S. S. BUSH, *President.*

139 The Hayneville & Montgomery Railroad Company, by C. W. Garrett, its Vice President and General Manager, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Hayneville & Montgomery Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Hayneville & Montgomery Railroad Company and in his own name as agent for the Hayneville & Montgomery Railroad Company.

Dated at Hayneville, Alabama, this 9 day of December, 1910.

HAYNEVILLE & MONTGOMERY RAILROAD COMPANY,
By C. W. GARRETT, *Vice-President.*

140 The Kentucky Highlands Railroad Company, by P. F. Manning, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Kentucky Highlands Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Kentucky Highlands Railroad Company and in his own name as agent for the Kentucky Highlands Railroad Company.

Dated at Frankfort, Kentucky, this 8th day of December, 1910.

KENTUCKY HIGHLANDS RAILROAD COMPANY,
By P. F. MANNING, *President.*

141 The Lexington & Eastern Railway Company, by Arthur Cary, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Lexington &

Eastern Railway Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Lexington & Eastern Railway Company and in his own name as agent for the Lexington & Eastern Railway Company.

Dated at Lexington, Kentucky, this 8th day of December, 1910.

LEXINGTON & EASTERN RAILWAY COMPANY,
By ARTHUR CARY, *President.*

Attest:
GEO. COPLAND, *Secretary.*

142 The Louisville & Atlantic Railroad Company, by W. L. Mapother, its Vice President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Louisville & Atlantic Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Louisville & Atlantic Railroad Company and in his own name as agent for the Louisville & Atlantic Railroad Company.

Dated at Louisville, Kentucky, this 9th day of December, 1910.

LOUISVILLE & ATLANTIC RAILROAD COMPANY,
By W. L. MAPOTHER, *Vice President.*

143 The Manistee & Repton Railroad Company, by Runyan and Burgoyne, its General Managers, hereby appoint and constitute A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Manistee & Repton Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Manistee & Repton Railroad Company and in his own name as agent for the Manistee & Repton Railroad Company.

Dated at Manistee, Alabama, this 12 day of December, 1910.

MANISTEE & REPTON RAILROAD COMPANY,
By WM. B. RUNYAN,
C. R. BURGOYNE,
General Managers.

144 The Marbury & Kingston Railroad Company, by D. H. Marbury, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Marbury &

Kingston Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Marbury & Kingston Railroad Company and in his own name as agent for the Marbury & Kingston Railroad Company.

Dated at Marbury, Alabama, this 10th day of December, 1910.

MARBURY & KINGSTON RAILROAD COMPANY,
By D. H. MARBURY, *President.*

145 The Marianna & Blountstown Railroad Company, by C. R. Evans, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Marianna & Blountstown Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Marianna & Blountstown Railroad Company and in his own name as agent for the Marianna & Blountstown Railroad Company.

Dated at Marianna, Florida, this 10 day of December, 1910.

MARIANNA & BLOUNTSTOWN RAILROAD COMPANY,
By C. R. EVANS, *President.*

146 The Pascagoula Street Railway & Power Company, by S. S. Bush, its Vice President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Pascagoula Street Railway & Power Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Pascagoula Street Railway & Power Company and in his own name as agent for the Pascagoula Street Railway & Power Company.

Dated at Louisville, Kentucky, this 7th day of December, 1910.

PASCAGOULA STREET RAILWAY & POWER COMPANY,
By S. S. BUSH, *Vice President.*

147 The Tennessee & Cumberland River Railroad Company, by John C. Ralls, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Tennessee & Cumberland River Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Tennessee & Cumberland River Railroad Company and

in his own name as agent for the Tennessee & Cumberland River Railroad Company.

Dated at Carlisle, Tennessee, this 9 day of December, 1910.

TENNESSEE & CUMBERLAND RIVER RAILROAD CO.,
By JOHN C. RALLS, *President.*

148 The Wasioto & Black Mountain Railroad Company, by T. J. Asher, its President, hereby appoints and constitutes A. R. Smith its attorney in fact for the purpose of submitting to the Interstate Commerce Commission the application of the Wasioto & Black Mountain Railroad Company for relief, under the Long and Short Haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic; and hereby authorizes said A. R. Smith to sign said application in the name of the Wasioto & Black Mountain Railroad Company and in his own name as agent for the Wasioto & Black Mountain Railroad Company.

Dated at Wasioto, Kentucky, this 9th day of December, 1910.

WASIOTO & BLACK MOUNTAIN RAILROAD COMPANY,
By T. J. ASHER, *President.*

149 *Certification.*

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the foregoing is a true copy of Fourth Section Application No. 1952 (except exhibits referred to on page 83, par. XI) for relief under the long and short haul provision of the Fourth Section of the Act to Regulate Commerce as amended, with respect to freight traffic, filed in behalf of the Louisville & Nashville Railroad Company and others, the original of which is now on file and of record in the office of the Interstate Commerce Commission.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Commission this — day of ——, 191–.

——— ———,
Secretary of the Interstate Commerce Commission.

150 Petition and Exhibits "A", "B", "C", "E", and "F", referred to in the foregoing Præcipe and filed in the United States Commerce Court on October 7th, 1912, *is* as follows:

United States Commerce Court.

No. 86.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the City of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

Petition.

(Filed October 7, 1912.)

In the United States Commerce Court.

In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
versus
UNITED STATES OF AMERICA, Respondent.

Petition.

To the Honorable the Judges of the Commerce Court:

The Louisville & Nashville Railroad Company exhibits this its petition against the United States of America, and thereupon says as follows:

1. Petitioner, Louisville & Nashville Railroad Company, is a corporation organized and existing under the laws of the State of Kentucky, and is now and continuously for a long period of years heretofore has been engaged as a common carrier in the transportation of interstate commerce.

Among the lines which it operates are a line from Louisville, Kentucky, on the Ohio River, to Nashville, Tennessee, on the Cumberland River, passing through Bowling Green, Kentucky, on the Barren River; and a line from Memphis Junction, Kentucky, a point on said line from Louisville, Kentucky, to Nashville, Tenn., about four miles south of Bowling Green, Kentucky, to Clarksville, Tennessee, on the Cumberland River.

The geographical situation of Louisville, Kentucky, Clarksville, Tennessee, Nashville, Tennessee, and Bowling Green, Ken-
151 tucky, and of petitioner's lines between those points, is shown by map marked "Exhibit A," filed herewith, and prayed to be read as a part hereof.

Petitioner also operates a line extending from St. Louis, Missouri, on the Mississippi River, through Evansville, Indiana, on the Ohio River, to Nashville, Tennessee, on the Cumberland River, which line from St. Louis, Missouri, to Nashville, Tennessee, crosses the said line from Memphis Junction, Kentucky, to Clarksville, Tennessee, at Guthrie, Kentucky, near the Kentucky-Tennessee State Line.

Petitioner also operates a line to Memphis, Tennessee, in extension of said line from Memphis Junction, Kentucky, to Clarksville, Tennessee.

Petitioner also operates lines extending from Louisville, Kentucky, and Cincinnati, Ohio, on the Ohio River, to Atlanta, Georgia, via Knoxville, Tennessee, and lines extending southwardly from Nashville, Tennessee, through Decatur, Alabama, and Birmingham, Alabama, to Montgomery, Alabama, Mobile, Alabama, Pensacola, Florida, River Junction, Florida, and New Orleans, Louisiana, and is in active competition with other carriers at competitive points for the transportation of traffic to and from points in the States of Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida, and from and to points in many other states and foreign countries.

At Louisville, Kentucky, at Nashville, Tennessee, and at Clarksville, Tennessee, there are competing railroads via which goods may be transported between those points and points in all States and territories and foreign countries without using petitioner's line. There is no competing line of railroad at Bowling Green, Kentucky.

The Ohio River, upon which Louisville, Kentucky, is situated, is navigable for its entire length. The Cumberland River is navigable from its mouth to Burnside, Kentucky; and Nashville, Tennessee, is situated about midway between the mouth of the rived and the head of navigation. Clarksville, Tennessee, is situated on the navigable part of the Cumberland River between Nashville, Tennessee, and the mouth of the river. The Barren River, upon which Bowling Green is situated, empties into the Green River, which, in turn, empties into the Ohio River near Evansville, Indiana. The Green and Barren rivers afford slack water navigation from the mouth of the Green River to Mammoth Cave, Kentucky, and to Bowling Green, Kentucky.

2. On or about August 18, 1911, the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, filed with the Interstate Commerce Commission a complaint, a copy of which is marked "Exhibit B," and is filed herewith and prayed to be read as part hereof. This complaint covered rates to and from Bowling Green, Kentucky, as compared with rates to and from Clarksville, Tennessee, Nashville, Tennessee, Louisville, Kentucky and Evansville, Indiana, from and to New York, Chicago, New Orleans, Jacksonville, St. Louis, and various other points, but did not involve a comparison of rates from Bowling Green, Kentucky, to Montgomery, Alabama, with rates from Clarksville, Tennessee, to same destination.

152 And it was alleged that the rates set forth were unjust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce; and that they were furthermore unduly prej-

udicial to the interests of the city of Bowling Green and unduly preferential to the interests of the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky, and that they were in violation of Section 3 of the Act to Regulate Commerce; and that they furthermore constituted in a majority of instances greater charges for the shorter distance to or from Bowling Green, Kentucky, than for the longer distances to or from the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky, such shorter distances being included within the longer distances, and being over the same line and in the same direction, and that said greater charges to or from Bowling Green were in violation of Section 4 of the Act to Regulate Commerce as amended June 18, 1910; and it was further alleged in said complaint that the circumstances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Kentucky, were substantially similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky. And it was prayed that relief be granted with respect to the rates and alleged violations of law complained of.

3. Your petitioner filed its answer to said complaint, a copy of which answer is marked "Exhibit C," is filed herewith, and prayed to be read as part hereof, and therein put in issue the material allegations of the complaint, and with respect to the allegation concerning the alleged violation of Section 4 of the Act to Regulate Commerce as amended June 18, 1910, petitioner set forth that all of its rates to and from Bowling Green were embraced in the list of tariffs as to which petitioner had filed an application with the Interstate Commerce Commission for relief from the provisions of the Fourth Section of the Act to Regulate Commerce as amended June 18, 1910, said application being entered upon the records of the Interstate Commerce Commission as No. 1952, and no determination thereof having been made by the Commission.

Petitioner denied that the circumstances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Kentucky, were substantially or at all similar to the circumstances and conditions surrounding the transportation of traffic to and from Clarksville, Tennessee, or Nashville, Tennessee, or Louisville, Kentucky.

4. By Fourth Section Application No. 1952, filed with the Interstate Commerce Commission on December 17, 1910, your petitioner, for itself and its connections, sought authority inter alia to continue, with respect to traffic to and from Louisville, Kentucky, Evansville, Indiana, Clarksville, Tennessee, and Nashville, Tennessee, to charge less for longer than for shorter distances for the transportation of property over the same line or route in the same direction, the shorter being included within the longer distance.

5. The proceeding instituted by the aforesaid complaint of
153 the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, was known as Docket No. 4310 before the Interstate Commerce Commission, and a hearing in said

proceeding was had as also a hearing in connection with that portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company, aforesaid, which seeks authority to continue lower rates on traffic through Louisville, Kentucky, to and from Clarksville and Nashville, Tennessee, than are charged on like traffic to and from intermediate stations between Louisville, Kentucky, Clarksville and Nashville, Tennessee; also that portion of the same application which seeks authority to continue lower rates on traffic through Nashville and Clarksville, Tennessee, to and from Louisville, Kentucky, than are concurrently effective on like traffic to and from intermediate stations between Clarksville and Nashville, Tennessee, and Louisville, Kentucky.

Petitioner offers to produce and file as part hereof, marked "Exhibit D," a transcript of the records of said hearings when and if required to do so, the great size and volume of said records being justification for not filing same at this time. Said transcript refers to and embraces all of the evidence which was introduced before the Interstate Commerce Commission in said proceedings and hearings.

The uncontradicted evidence introduced in said proceedings and hearings before the Interstate Commerce Commission shows, and it is true:

(*a*) That the circumstances and conditions surrounding the transportation of the traffic to and from the city of Bowling Green, Kentucky, are not substantially or at all similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky;

(*b*) That there is a degree of substantial and controlling competition with water carriers at Louisville, Kentucky, and at Nashville and Clarksville, Tennessee, which does not exist at Bowling Green, Kentucky;

(*c*) That there is at Louisville, Kentucky, and at Nashville and Clarksville, Tennessee, substantial and controlling competition of rail carrier with rail carrier, intensified by market competition, and that there is no such competition at Bowling Green, Kentucky;

(*d*) That the rates complained of are reasonable in and of themselves, and that the Louisville, Kentucky, Nashville, Tennessee, and Clarksville, Tennessee, rates are not lower than it is necessary that they should be in order to meet the competition which exists at those points;

(*e*) That the rates to and from Bowling Green meet the competition which exists at that point as far as it is necessary so to do.

6. Thereafter, regardless of and in direct conflict with the uncontroverted facts established in said proceedings, the Interstate Commerce Commission made a report in writing together with certain orders in respect thereto, copies of which report and
154 orders are filed herewith, marked "Exhibit E," and prayed to be read as part hereof.

This report is known as Opinion No. 1940 of the Interstate Commerce Commission, and therein the Commission, without warrant

of law or fact, found that there exists a community of interests between the water and rail carriers serving Bowling Green, the effect of which is to deprive it of the benefit of water competition which it is conjectured it should enjoy under normal and natural conditions, and that under such situation the rail carrier is estopped from justifying a discrimination against Bowling Green in favor of Nashville and Clarksville on the ground of differences in circumstances and conditions with respect to water competition; that if it were not for the alleged affiliation between the rail carrier and the water carrier there would not be sufficient actual dissimilarity between the circumstances and conditions surrounding the transportation by water to and from Bowling Green, Nashville, and Clarksville to justify relieving the Louisville & Nashville Railroad from the operation at Bowling Green of the Long and Short Haul Clause of the Act to Regulate Commerce; that the railroad competition at Louisville and Clarksville is not of sufficient force and effect to justify a lower scale of rates at those points than at Bowling Green on traffic the movement of which is through Bowling Green; that the defendants laid stress, as justifying discrimination, on the fact that Nashville is a commercial center of importance, and that the volume of trade there far surpasses that of Bowling Green; that the rates to and from Bowling Green are unjustly discriminatory in and to the extent that they exceed the rates contemporaneously maintained as applicable through Bowling Green to and from Nashville; that there is no competing rail route from Clarksville, Tennessee; that the rates to Montgomery, Alabama, from Bowling Green, as compared with the rates to Montgomery from Clarksville are unjustly discriminatory and that for the future the rates from Bowling Green to Montgomery should not exceed the rates contemporaneously maintained from Clarksville to Montgomery; that on oranges from Jacksonville, Florida, to Bowling Green petitioner is not entitled to apply a rate in excess of the rate contemporaneously maintained on the same commodity from Jacksonville to Louisville, because a competing rail route to Louisville is only four per cent shorter than the route through Bowling Green. And said report containing the findings of fact made by the Commission, and the Commission's unwarranted conclusions thereon, were referred to and made a part of the orders of the Commission with respect thereto, the substantive portions of said orders being as follows, to-wit:

"It is ordered, That the above-named defendants, according as they participated in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving any higher rates for the transportation of traffic from New York, N. Y., and related points, to Bowling Green, Ky., than those contemporaneously maintained over their lines on the same traffic from the same
155 points of origin to Nashville, Tenn., when such traffic passes through said Bowling Green.

"It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and re-

quired to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter to maintain, and apply to the transportation of traffic from New York, N. Y., and related points, to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the same traffic from the same points of origin to Nashville, Tenn., when such traffic passes through said Bowling Green.

"It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving any higher rates for the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., than those contemporaneously maintained over their lines on the same commodity from said Jacksonville to Louisville, Ky.

"It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter to maintain, and apply to the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the same commodity from Jacksonville, to Louisville, Ky.

"It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving any higher rates for the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala., than those contemporaneously maintained over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala.

"And it is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter maintain, and apply to the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala., rates which shall not exceed those contemporaneously maintained over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala.

"It is ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby, denied, effective September 1, 1912.

"It is further ordered, That that portion of said applica-
156 tion, No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in

effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective September 1, 1912.

"And it is further ordered, That the petitioners herein be, and they are hereby, authorized to continue to charge lower rates on sugar from New Orleans, La., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, provided that the present rates to Bowling Green are not exceeded.

"The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation and correction if in conflict with any other provision of the act."

7. Petitioner further says that the facts in said proceedings were undisputed, and that there was no substantial evidence before the Commission to support its said orders, but that said orders proceeded from a misconstruction of the Act to Regulate Commerce as applicable to the conditions which were shown to exist. That while petitioner and the other defendants in said proceedings are ostensibly given the option of either raising the rates to or from Nashville, Tennessee, Clarksville, Tennessee, and Louisville, Kentucky, or of lowering the rates to and from Bowling Green, Kentucky, it is as a matter of fact not within the power of petitioner to make the adjustment by raising the rates to or from Nashville, Louisville, and Clarksville. That the Commission itself found in the said proceedings, and it is a fact, that water competition of the Cumberland River has a controlling influence on the Nashville and Clarksville rates, and it is shown by the uncontradicted testimony in said proceedings, and it is a fact, that the rates to Louisville are controlled by competition both by rail and by water. That compliance with the said orders of the Commission will necessitate the reduction of the rates to and from Bowling Green, which rates have been affirmatively shown to be just and reasonable rates, and which rates have not been found by the Commission to be unjust or unreasonable. That the said orders of the Commission are beyond the limits of the power delegated by the acts of Congress to the Commission, and that the said orders of the Commission, even if in form within its delegated power, are the result of so unreasonable an exercise of said power that they are in substance beyond it.

Petitioner says that should said orders remain and continue in effect the annual loss to petitioner resulting therefrom will aggregate many thousands of dollars; and accordingly petitioner avers that the matter and amount in dispute in this proceeding as to it far exceeds the sum of three thousand dollars ($3,000) exclusive of interest and costs.

And petitioner further says that the enforcement of said orders of the Interstate Commerce Commission will result in taking petitioner's property without due process of law, in contraven-
157 tion of the Constitution of the United States, and more particularly in contravention of the Fifth Amendment thereto.

8. Your petitioner shows that the Interstate Commerce Commission acted in a capricious and unreasonable manner, exceeded the

authority delegated to it by Congress, and erred as a matter of law in the following particulars: The Commission found from a review of the facts concerning an alleged relation between the packet company and the Louisville & Nashville Railroad at Bowling Green that the rail carrier has had and still retains a dominating influence over the water carrier with respect to the making of rates in which the rail carrier may be interested, and that the facts of record reveal a community of interest between the water and rail carriers serving Bowling Green, the effect of which is to deprive it of the benefit of water competition which it should enjoy under normal and natural conditions, and the Commission based part of its said orders upon said findings.

And there was no evidence to support said findings.

On the contrary, it was shewn by uncontradicted evidence, and it is true, that the Louisville & Nashville Railroad Company owned no part of the Evansville & Bowling Green Packet Company or of its capital stock; that it had nothing to do with the making of rates from Evansville to Bowling Green; that these rates were agreed upon between the Evansville & Bowling Green Packet Company and representatives of citizens of Bowling Green, to which agreement the Louisville & Nashville Railroad Company was not a party; and that the Louisville & Nashville Railroad Company thereafter fixed its differentials over the Evansville water rates to represent what it believed to be a fair difference for the rail service as compared with the river; that the boat rates aforesaid were the rates applied in the interest of the merchants and citizens of Bowling Green by a boat operated by them during the rate war, which resulted in said agreement with the Packet Company; and said adjustment of rates has been continuously since then, and now is, in force.

Petitioner says, accordingly, that the conclusion of the Commission that the rail carrier, the Louisville & Nashville Railroad Company, has had a dominating influence over its competing water carrier with respect to the making of rates in which the rail carrier may be interested is not a fair or reasonable conclusion from any facts cited by the Commission, or from any other facts of record, or from any facts at all; and that the conclusion that the Louisville & Nashville Railroad Company still retains a dominating influence over the water carrier at Bowling Green is absolutely impossible from any facts of record, or from any facts at all. And petitioner further says that said conclusions are absolutely incompatible with the facts established by uncontradicted testimony in the record, to-wit:

(*a*) The fact that the only effective influence of the transportation in Green and Barren rivers toward reducing the rates at Bowling Green shown to the Commission was at a time subsequent to the time when the Louisville & Nashville Railroad Company is alleged to have obtained control of the river.

(*b*) The facts that the packet company continues to com-
158 pete for business to and from Evansville at rates of the Steamer Sun, and that the Louisville & Nashville Railroad

Company has adjusted its rates with relation to the rates of the packet company, as above set forth.

(*c*) The facts that the Louisville & Nashville Railroad Company owns no part of the Evansville & Bowling Green Packet Company, and has nothing to do with the making of the rates from Evansville to Bowling Green, as above set forth.

(*d*) The facts that the rates of the Evansville & Bowling Green Packet Company were agreed to by and between the packet company and representatives of the citizens of Bowling Green, and that the Louisville & Nashville Railroad Company fixed its differentials over the Evansville rate to represent what it believed to be a fair difference for the rail service as compared with the river, as above set forth.

(*e*) The fact that the rates of the Evansville & Bowling Green Packet Company are not rates dictated or controlled by the Louisville & Nashville Railroad Company, but are the reduced rates of the Steamer Sun put in effect by the packet company in 1901 under agreement with certain representatives of the citizens of Bowling Green after the Steamer Sun had been put in the river for the purpose of reducing the rates, as above set forth.

And petitioner says that in reaching said conclusions with respect to the dominating influence of the rail line and the community of interest between the water and rail carriers serving Bowling Green, and in issuing its said orders based thereon, the Interstate Commerce Commission acted in so capricious and unreasonable a manner that even if its conclusions and orders are in form within the power delegated to it by Congress they are in substance beyond said power.

And petitioner further says that even if it were true that the railroad company has a dominating influence over the water carrier, there are no facts of record and there are no facts at all to support the conclusion of the Commission, or its said orders based thereon, that the effect of the community of interest between water and rail carriers is to deprive Bowling Green of the benefit of water competition which it should enjoy under normal and natural conditions. Petitioner says that, on the contrary, the facts of record show, and it is true, that regardless of any influence which the railroad company might have over the water carrier, transportation in the Green and Barren rivers has never had and can never reasonably be expected to have a substantial or controlling effect upon the rates of transportation at Bowling Green beyond the extent to which such competition has been fully met by petitioner; and petitioner says that the conclusion of the Commission in this regard, and its said orders based thereon, involve the establishment by the Commission by fiat of a purely speculative and unreal competition at Bowling Green, Kentucky, and that the Commission exceeded the authority delegated to it by Congress, and erred as a matter of law on that account.

9. Your petitioner also shows that the Interstate Commerce Commission acted in a capricious and unreasonable manner, and
159 erred as a matter of law in the following particulars, to-wit: The Commission found that if it were not for the alleged

relation of the rail carrier to the water carrier there would not be sufficient actual dissimilarity between the circumstances and conditions surrounding the transportation by water to and from Bowling Green, Nashville, and Clarksville, to justify relieving petitioner, defendant in the proceedings, from the operation at Bowling Green of the Long and Short Haul Clause of the Act to Regulate Commerce, and the Commission based its said orders on this finding. There was introduced no evidence to sustain such a finding, and there are no facts of record, and there are no facts at all, to support such a conclusion, or the orders based thereon.

The Commission found from the facts before it regarding the rivers that "it seems fair to conclude that the potential competition on the Green and Barren rivers is as great as on the Cumberland River," and the Commission based its said orders on this finding. Petitioner alleges that no evidence whatsoever was introduced before the Commission tending to show that the potential competition on the Green and Barren rivers is as great as on the Cumberland River, and that there are no facts of record, and that there are no facts at all, tending to support such a conclusion or the said orders based thereon.

Petitioner says that the fact that the Green and Barren rivers by means of a system of locks and dams are navigable from the mouth of the Green River to Bowling Green, Kentucky, located on the Barren River, is undisputed, and that the Commission erred as a matter of law in holding that the mere fact of navigability creates potential competition on the Green and Barren rivers as great as the competition on the Cumberland River.

Petitioner says that the Interstate Commerce Commission held that there is no doubt that the water competition of the Cumberland River has a controlling influence on the Nashville and Clarksville rates, and that the conclusion of the Commission that the potential competition on the Green and Barren rivers is as great as on the Cumberland River, and the orders of the Commission based thereon, are in effect a finding that the conjectural competition in the Green and Barren rivers must have a controlling influence on the Bowling Green rates, and in effect an order that the Louisville & Nashville Railroad Company reduce its rates to and from Bowling Green on account of such conjectural water competition. Said finding and said orders were based, not upon any competent evidence, nor upon any evidence at all, but were the result of mere conjecture, and said orders are in excess of the authority or the power delegated to the Interstate Commerce Commission by law.

And petitioner says that the orders of the Commission complained of are in effect orders directed to petitioner to meet the conjectural competition of the Green and Barren rivers at Bowling Green, Kentucky, by a reduction of its rates, and in this the Commission erred as a matter of law because the Commission is without authority to compel a carrier to meet competition, real or conjectural, which the carrier does not desire to meet.

10. And petitioner further shows that the Interstate Commerce

Commission acted in a capricious and unreasonable manner
160 and exceeded the authority delegated to it by Congress, and erred as a matter of law, in the following particulars, to-wit: The Commission found that the railroad competition at Nashville and Clarksville is not of such force and effect as to justify a lower scale of rates at those points than at Bowling Green on traffic the movement of which is through Bowling Green, and based this finding on the facts that the Louisville & Nashville Railroad Company owns 71 per cent of the stock of the Nashville, Chattanooga & St. Louis Railway, and that since the Tennessee Central Railroad entered Nashville and Clarksville as an independent line the already low rates at those points were not reduced. Petitioner says that said conclusion of the Commission was based, not upon any competent evidence, nor upon any evidence at all, but was the result of mere conjecture, and that the orders made by the Commission in said proceedings were based on conjecture as aforesaid, and are in excess of the authority of said Commission under the Act to Regulate Commerce, or under any other law.

And petitioner says that there are no facts of record, and that there are no facts at all, which support or which tend to support said conclusion, or the said orders based thereon, and that said conclusion is absolutely incompatible with the following uncontradicted testimony which was heard before the Commission in said proceedings, and which is true, to-wit:

(*a*) That the Louisville & Nashville has no stronger, if as strong a competitor as the Nashville, Chattanooga & St. Louis Railway at Nashville.

(*b*) That the Illinois Central Railroad, in connection with the Nashville, Chattanooga & St. Louis Railway, competes with the Louisville & Nashville Railroad Company for business into and out of Nashville and that the Illinois Central, in connection with the Tennessee Central Railroad Company, competes with the Louisville & Nashville Railroad Company for business into and out of Nashville and Clarksville.

(*c*) That the competition at Nashville and at Clarksville is "north, south, east, and west, criss-cross and every way you can make it."

11. Your petitioner also shows that said findings and said orders of the Interstate Commerce Commission are unauthorized and erroneous in the following respect, to-wit: That the Commission misapprehended the evidence which was introduced in said proceedings with reference to the commercial history of Nashville and of Bowling Green, and that its said orders are based on this misapprehension, namely: the Commission was controlled in making its findings and orders by the belief that the evidence so introduced by defendants was for the purpose of showing that Nashville was entitled to lower rates because Nashville was recognized as a trade center. Defendant's purpose in introducing this evidence was, on the contrary, to show that complainant's claims as to the natural advantages of Bowling Green in the matter of river transportation were not borne out by the history of transportation on the Green and Barren rivers, and to show the indisputable facts that Nashville and Clarksville, as the

result of their geographical location, and not as the result of
161 any action of the railroads, were important distributing points before the railroads were built, and that the transportation afforded by the Green and Barren rivers has never been sufficient or substantial enough to affect the rates or traffic conditions at Bowling Green as river transportation affected and affects the rates at Nashville and Clarksville, and that the railroads when they reached Nashville and Clarksville simply met the conditions which they found at those points, and that those conditions have never existed and have never had to be met to the same or substantially the same extent at Bowling Green.

Petitioner says that the orders of the Commission are based on the erroneous conclusions of the Commission which arose from said misconception of the evidence and the issues, and that said orders are unauthorized and unlawful, and if enforced will result in taking petitioner's property without due process of law.

12. And petitioner further shows that the Interstate Commerce Commission proceeded in a capricious and unreasonable manner, exceeded the authority delegated to it by Congress, and erred as a matter of law in the following particulars, to-wit: The Commission found that the rates to and from Bowling Green, Kentucky, are unjustly discriminatory in and to the extent that they exceed the rates contemporaneously maintained as applicable through Bowling Green to and from Nashville, Tennessee, and that for the future defendant should not be relieved from the operation of the fourth section of the Act with regard to the rates to and from those points, and it issued its said orders, particularly its Fourth Section Order No. 1361, based upon this finding. Petitioner says that said finding and the orders based upon it were made not upon any competent evidence, or upon any evidence, but in the face of compelling uncontradicted evidence to the contrary, and that no evidence was introduced before the Commission tending to sustain this conclusion of the Commission, or the orders based thereon, and that there are no facts of record, and that there are no facts at all, sustaining or tending to sustain said conclusions or orders. And said orders are based upon mere caprice and conjecture, and are in excess of the authority of the Commission, and will, if enforced, violate the rights of petitioner under the Act to Regulate Commerce.

13. And petitioner further shows that the Interstate Commerce Commission proceeded in a capricious and unreasonable manner, exceeded the authority delegated to it by Congress, and erred as a matter of law in the following particulars, to-wit: The Commission found that there is no competing rail route either from Clarksville or from Bowling Green, and that defendant's rates to Montgomery, Alabama, from Bowling Green as compared with its rates to Montgomery from Clarksville, Tennessee, are unjustly discriminatory, and that for the future the rates from Bowling Green to Montgomery should not exceed the rates contemporaneously maintained from Clarksville to Montgomery, and the Commission based its said orders upon said findings, particularly that portion of said orders which provides that defendants be notified and required to cease and desist

and abstain from charging, demanding, collecting, or re-
162 ceiving any higher rates for the transportation of traffic from Bowling Green, Kentucky, to Montgomery, Alabama, than those contemporaneously maintained over their lines on the same traffic from Clarksville, Tennessee, to Montgomery, Alabama, and that said defendants, according as they participate in the traffic, be notified and required to establish and maintain and apply to the transportation of traffic from Bowling Green, Kentucky, to Montgomery, Alabama, rates which shall not exceed those contemporaneously maintained over their lines on the same traffic from Clarksville, Tennessee, to Montgomery, Alabama.

Petitioner says that the uncontradicted testimony in said proceedings shows, and it is a fact, that there is a competing rail route from Clarksville, to-wit: the Tennessee Central Railroad; and petitioner says that the rates from Clarksville to Montgomery as compared with the rates from Bowling Green to Montgomery were not in issue and no investigation was had, and no hearing afforded, as to the rates from Clarksville to Montgomery compared with the rates from Bowling Green to Montgomery. The only rates to Montgomery complained of in comparison with the Bowling Green rates were those from Nashville, Tennessee, Evansville, Indiana, and Louisville, Kentucky, as set forth in Paragraph XV of the petition of the Bowling Green Business Men's Protective Association, which is marked "Exhibit B" and filed herewith, and which has been prayed to be read as part hereof. And the orders of the Commission with respect to rates from Bowling Green, Kentucky, to Montgomery, Alabama, with relation to rates from Clarksville, Tennessee, to Montgomery, Alabama, are orders made without the full hearing provided for by the Act to Regulate Commerce, and if enforced would deprive petitioner of its property without due process of law; and petitioner says that said orders of the Commission, and particularly those parts of said orders in this paragraph specially referred to, are unconstitutional and void on that account.

14. And petitioner further shows that the Interstate Commerce Commission erred as a matter of law in holding that a community of interest between the water and rail carriers at Bowling Green (even if such community of interest should exist) estops the rail carrier from setting up the differences in competitive influences at Bowling Green and at Nashville and at Clarksville in justification of discriminations in rates to and from said points.

At page 23 of its Report, the Commission said:

"We believe the record reveals a community of interests between the water and rail carriers, the effect of which is to deprive Bowling Green of the benefit of water competition, which it should enjoy under normal and natural conditions, and that under a situation such as this, the rail carrier is estopped from justifying its discrimination against Bowling Green in favor of Nashville and Clarksville on the ground that its rates to and from all three points properly reflect the water competition existing at them."

And petitioner says that the orders of the Commission complained

of are based upon said erroneous holdings or conclusions, and
163 that said orders of the Commission are beyond the authority of the Commission to make, and are unlawful on that account.

15. And your petitioner further shows that said orders of the Interstate Commerce Commission exceed the authority delegated to it by Congress, and that the Commission erred as a matter of law in the following particular, to-wit: The Commission held that it is true that there is no rail competition in the transportation of oranges to Bowling Green, while between Jacksonville and Louisville there is a through competing route, but that because the competing route is only 4 per cent shorter than the route through Bowling Green defendants were not entitled to apply at Bowling Green a rate on oranges from Jacksonville that is in excess of the rates contemporaneously maintained on the same commodity from Jacksonville to Louisville, and the orders complained of included and were based upon said conclusion of the Commission. Petitioner says that the question to be determined is not what percentage of difference there may be between the long line and the short line, but as to whether or not there is substantial and controlling competition as to said traffic from Jacksonville to Louisville that does not exist as to the traffic from Jacksonville to Bowling Green and that the Commission erred as a matter of law in said conclusion and in the order based thereon.

16. And petitioner further shows that the Interstate Commerce Commission erred as a matter of law in the orders complained of in that those orders provide for lower rates to and from Bowling Green, Kentucky, than the reasonable rates which are charged to and from intermediate local points, the lower rates to and from the longer distance point, Bowling Green, not being justified by any substantial or controlling competition or by any other differences in circumstances and conditions of the traffic.

Petitioner says that it is interested in this particular violation of the Act to Regulate Commerce because the orders complained of, if put into force and effect, will necessarily result in reducing petitioner's revenue on traffic to and from Bowling Green, Kentucky, and said orders will further result in reducing petitioner's revenue on traffic to and from local stations on petitioner's lines for which lower rates may be made by combination with the said reduced rates to and from Bowling Green than are now in effect to and from said local stations. For example, if petitioner's rates between Louisville, Kentucky, and Bowling Green, Kentucky, are reduced as is required by said orders, petitioner's reasonable rates now existing between Louisville, Kentucky, and Memphis Junction, Kentucky (which is a point on the main line of petitioner between which and Louisville is Bowling Green), will have to be reduced under the Fourth Section of the Act to Regulate Commerce as amended June 18, 1910, because the sums of the intermediate rates between Louisville and Bowling Green required by the orders and the existing intermediate rates Bowling Green to Memphis Junction, Kentucky, will be less than the present reasonable through rates between Louisville, Kentucky, and Memphis Junction, Kentucky. And what applies to Memphis Junction applies also to other points.

164 17. Petitioner further shows that the orders of the Interstate Commerce Commission complained of exceed the authority delegated to the Commission by Congress, and that the Commission erred as a matter of law in that the orders of the Commission complained of require the reasonable rates to and from Bowling Green, Kentucky, to be reduced, and the Commission has not found the existing rates to be unreasonable. Petitioner says that if said orders of the Commission are enforced they would operate to deprive petitioner of its property without due process of law and in violation of petitioner's rights under the Act to Regulate Commerce.

18. And petitioner further says that it presented on or about August 24, 1912, to the Interstate Commerce Commission a petition for rehearing setting forth the manifold errors of fact and law committed by the Commission in the conclusions and orders complained of. A copy of said petition for rehearing is marked "Exhibit E" and is filed herewith and prayed to be read as part hereof. And in said petition for rehearing your petitioner prayed the Interstate Commerce Commission to grant to it a rehearing in the said proceedings and a reargument thereof, and that pending said rehearing the Commission would stay and postpone the enforcement of the orders entered in said proceedings, and that after rehearing the Commission might reverse, change, and modify the said orders as in law and fact might appear just; and petitioner further prayed that if the Interstate Commerce Commission would not grant the rehearing and the reargument desired it would at least by special order to that effect stay and postpone the effective date of the enforcement of the orders herein complained of in order that petitioner's rights in that regard might be decided in a court of competent jurisdiction without the expense and inconvenience which will necessarily result from a compliance with the orders of the Commission pending such judicial determination. And your petitioner hoped that the Interstate Commerce Commission would have complied with the reasonable requests of petitioner as in justice and equity said Commission ought to have done, but said Commission has not granted said petition for rehearing, but did postpone until October 15th the effective date of said orders merely on account of the physical impossibility of correcting by September 1st the multitude of tariffs affected by the orders, which impossibility was shown to the Commission by attorney for petitioner in addition to the matters set forth in the petition for rehearing.

19. Petitioner further avers that unless the orders complained of be set aside and annulled upon final hearing by this Honorable Court of this suit, and unless their operation be restrained and suspended by this Honorable Court on or before October 15, 1912, pending the final hearing and determination of this suit, petitioner will, by reason of the enormous penalties provided by the Act to Regulate Commerce for failure to comply with an order of the Interstate Commerce Commission, be compelled to put said orders into effect, and that such action will result in irreparable loss to petitioner by

eason of changes in tariffs and basis for constructing rates
165 o and from Bowling Green and thereafter will result in the oss of many thousands of dollars annually to your petitioner and ll subject your petitioner to great loss and damage and ir- repa ble injury, for all of which your petitioner is without ade- qua remedy at law.

consideration whereof, petitioner prays that said orders of the In rstate Commerce Commission may be wholly enjoined, set aside, a annulled, and that a preliminary injunction may be awarded restraining the enforcement thereof, and that such other further and full relief may be granted as the case requires.

And to this end petitioner prays that the United States of Amer- ica may be made a party defendant to this petition, and required to answer its allegations, an answer under oath being now expressly waived.

And as in duty bound, the petitioner will ever pray, etc.

ALBERT S. BRANDEIS,
WILLIAM A. COLSTON,
Solicitors for the Louisville & Nashville Railroad Company.

UNITED STATES OF AMERICA,
Jefferson County, State of Kentucky, ss:

Personally appeared before me, G. W. B. Olmstead, a Notary Pub- lic in and for the aforesaid State and county, C. B. Compton, who, first being duly sworn, deposes and says:

That he is Freight Traffic Manager of the Louisville & Nashville Railroad Company, petitioner in the foregoing petition; that he has read the foregoing petition, and knows the contents thereof, and that the matters therein stated are true.

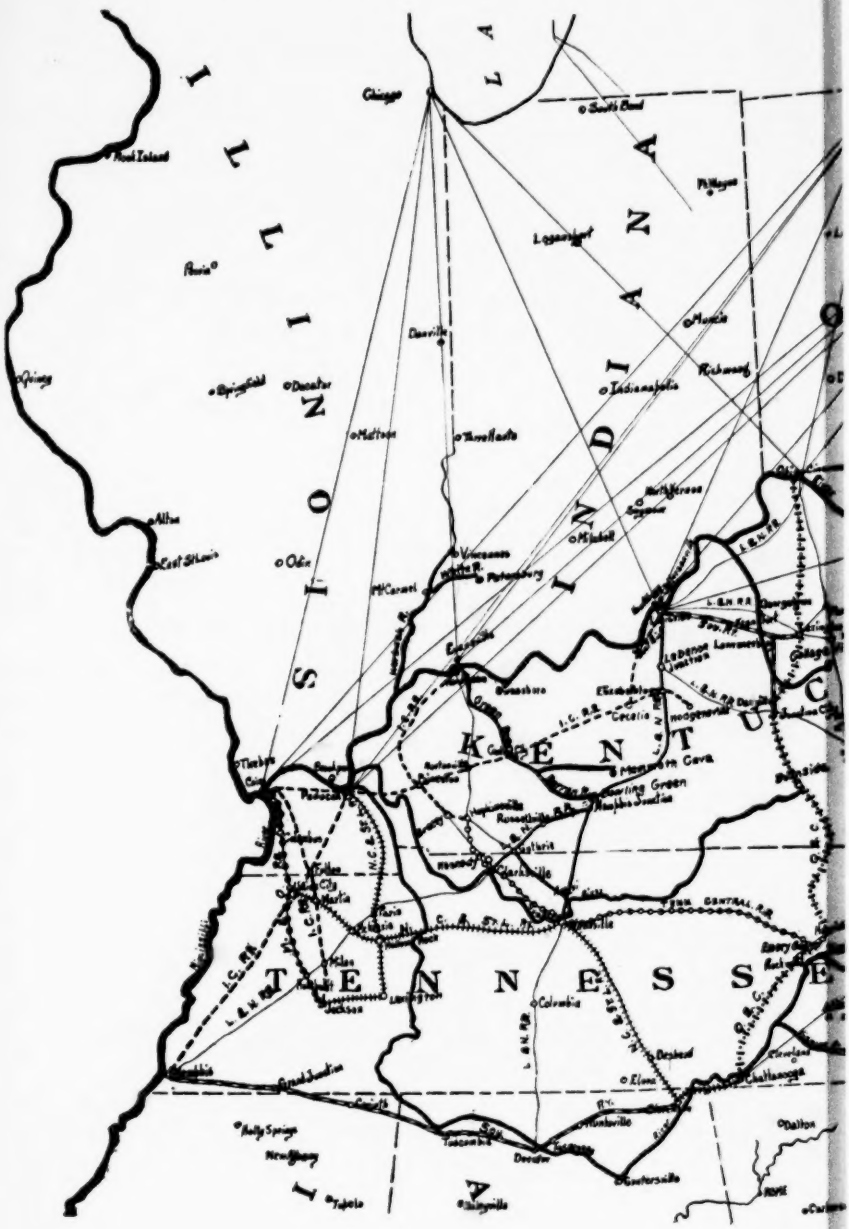
C. B. COMPTON.

Subscribed and sworn to before me this 5th day of October, 1912. My Commission as Notary Public expires January 24, 1914.

In witness whereof, I have hereunto signed my name and affixed my notarial seal this 5th day of October, A. D. 1912.

[SEAL.]

G. W. B. OLMSTEAD,
Notary Public, Jefferson County, Ky.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Indianapolis
Richmond
Muncie
Logansport
Michigan City
South Bend
Elkhart
Mitchell
Louisville
Lexington
Frankfort
Cincinnati
Covington
Newport
Maysville
Ashland
Paducah
Hopkinsville
Owensboro
Bowling Green
Glasgow
Cave City
Mammoth Cave
Elizabethtown
Lebanon Junction
Harrodsburg
Danville
Somerset
Corbin
Barbourville
Middlesboro
Harlan
Pineville
Cumberland Gap
Jackson
Columbia
Nashville
Memphis
Grand Junction
Corinth
Tuscumbia
Decatur
Huntsville
Chattanooga
Cleveland
Dalton
Rome
Oakdale
Elora
Shelbyville
Tullahoma
Winchester
Sewanee
Monteagle
Fayetteville
Pulaski
Columbia
Jackson
Union City
Dyersburg
Milan
Humboldt
Trenton
Martin
Kenton
Hickman
Fulton
Mayfield
Benton
Murray
Princeton
Madisonville
Hopkinsville
Guthrie
Russellville
Auburn
Scottsville
Franklin
Glasgow Jct.
Cave City
Elizabethtown
Lebanon Junction
Louisville
Shepherdsville
Bardstown
Springfield
Lebanon
Campbellsville
Greensburg
Columbia
Jamestown
Somerset
Burnside
Stanford
Danville
Harrodsburg
Lawrenceburg
Frankfort
Versailles
Lexington
Paris
Georgetown
Cynthiana
Falmouth
Carlisle
Maysville
Ashland
Catlettsburg
Ironton
Portsmouth
Jackson
Hamden
Wellston
Middleport
Pomeroy
Gallipolis
Point Pleasant
Huntington
Kenova
Ceredo
Ashland
Catlettsburg
Grayson
Olive Hill
Morehead
Mt. Sterling
Winchester
Richmond
Irvine
Berea
London
Corbin
Williamsburg
Barbourville
Pineville
Middlesboro
Harlan
Cumberland Gap
Jellico
Oneida
Huntsville
Wartburg
Rockwood
Harriman
Kingston
Knoxville
Maryville
Alcoa
Sevierville
Newport
Morristown
Bristol
Johnson City
Elizabethton
Erwin
Unicoi
Greeneville
Rogersville
Kingsport
Bristol
Abingdon
Glade Spring
Marion
Wytheville
Pulaski
Radford
Roanoke
Lynchburg
Bluefield
Princeton
Welch
Williamson
Kenova
Huntington
Point Pleasant
Gallipolis
Pomeroy
Middleport
Portsmouth
Jackson
Hamden
Wellston
Ironton

EXHIBIT A

LAKE
Toledo
Cleveland
Sandusky
Akron
Mansfield
Lima
OHIO
Springfield
Columbus
Dayton
Parkersburg
WEST VIRGINIA
Huntington
Charleston
KY
Maysville
Ashland
Big Sandy
Ohio River
Ashland
Ironton
Portsmouth
Ashland
Catlettsburg
Ashland
Ashland
Ashland

Wilkesbarre
NNSYLVANIA
Harrisburg
Philadelphia
EASTERN CITIES
Wilmington
NEW
MARYLAND
DELAWARE
Baltimore
Washington
Alexandria
Strasburg
CHESAPEAKE BAY
VIRGINIA
Richmond
Lynchburg
Petersburg
Cape Charles
Norfolk
Suffolk
Weldon
Odorho
Henderson
Durham
Tarboro
Greensboro
Raleigh
Wilson
Greenville
Washington
CAROLINA
Sanford
Goldsboro
Kinston
Newbern
Fayetteville
MORTON
Asheboro
Rockfort
Florence
Sumter

In the United States Commerce Court. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
versus
UNITED STATES OF AMERICA, Respondent.

PETITIONER'S EXHIBIT BOOK.

Exhibits Filed With and Prayed to be Read as Part of Petition in the Above-entitled Case.

(Filed October 7, 1912.)

Albert S. Brandeis, William A. Colston, Solicitors for the Louisville & Nashville Railroad Company.

(Here follows map marked pp. 33 and 34.)

(Here follows map marked p. 166.)

167 EXHIBIT B.

Before the Interstate Commerce Commission.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KENTUCKY,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & St. Louis Railway, Western & Atlantic Railroad, Evansville & Terre Haute Railroad Company, Chicago & Eastern Illinois Railroad Company, Norfolk & Western Railway Company, The Lake Shore & Michigan Southern Railway Company, Michigan Central Railroad Company, The Cincinnati, Hamilton & Dayton Railway Company, Pennsylvania Company, The Pennsylvania Railroad Company, The Baltimore & Ohio Railroad Company, Baltimore & Ohio Southwestern Railroad Company, Chicago, Indianapolis & Louisville Railway Company, Rapid Railroad Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Maine Central Railroad Company, The New York Central & Hudson River Railroad Company, The Delaware, Lackawanna & Western Railroad Company, West Shore Railroad Company, The Chesapeake & Ohio Railway Company, Illinois Central Railroad Company, Southern Railway Company, The New York, New Haven & Hartford Railroad Company, Boston & Albany Railroad Company, Boston & Maine Railroad, The New York, Chicago & St. Louis Railroad Company, Pere Marquette Railroad Company, Philadelphia & Reading Railway Company, The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company, Lehigh Valley Railroad Company, The Wabash Railroad Company, Old Dominion Steamship Company, Merchants & Miners Transportation Company, The Maine Steamship Company.

The petition of the above named complainant respectfully shows:

I.

That the Bowling Green Business Men's Protective Association is a corporation organized and doing business under the laws of the Commonwealth of Kentucky with power to sue and be sued in its corporate name, and is an organization composed of the merchants, business men and shippers of Bowling Green, Kentucky; that the purpose of said organization is, among other things, to further the common interests of the business men, merchants, shippers and consumers of the city of Bowling Green.

II.

That the city of Bowling Green is a city classified under the laws of the Commonwealth of Kentucky as a city of the third class, and is situated in Warren County on the main line of the Louisville &

Nashville Railroad, 114 miles from the city of Louisville, 72
168 miles from the city of Nashville, Tennessee, and 60 miles from Clarksville, Tennessee, said city of Clarksville being located on the Memphis branch of the said Louisville & Nashville Railroad; and that said city of Bowling Green is also situated on the Barren River, at the head of slack water navigation, 200 miles by water from Evansville, Indiana, with complete and uninterrupted navigation throughout the year on Barren and Green Rivers by large boats plying between Evansville, Indiana, and Bowling Green, Kentucky.

III.

That the defendants above-named are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment wholly by railroad, or partly by railroad and partly by water, as the case may be, between New York City, Chicago, St. Louis, Boston, Philadelphia, Indianapolis, and various other northern, eastern and western points and Bowling Green, Kentucky, and also in the transportation of property from Bowling Green, Kentucky, to Atlanta, Georgia; Montgomery, Alabama; Jackson, Mississippi; and various other points in the south, southeast and southwest; and as such common carriers are subject to the act to regulate commerce approved February 4, 1887, and acts amendatory thereof and supplementary thereto.

IV.

That the above named defendants have published and filed with the Interstate Commerce Commission and are charging and collecting from shippers rates upon classes and commodities from said points of origin to Bowling Green, Kentucky, and from Bowling Green, Kentucky, to destinations in the north and east, and in the south, southeast and southwest, which are unreasonable, unjust, and unduly prejudicial to the interests of the city of Bowling Green, and the shippers, business men and consumers located thereat.

V.

That through rates from Chicago, Illinois, to Bowling Green, Ky., are formed by adding the rates from Chicago to Louisville, Ky., governed by the Official Classification, to the rates from Louisville to Bowling Green, governed by the Southern Classification, and that said rates on Classes 1 to 6, inclusive, of the Official Classification, and on classes 1 to E, inclusive, of the Southern Classification are as follows, viz:

	1	2	3	4	5	6	A	B	C	D	E
Official classification from Chicago to Louisville....	41	35	26	18	16	13	..	..	..	..	..
Southern classification from Louisville to Bowling Green	55	47	42	37	32	30	30	30	20	15	30

169 That the rates from Chicago, Illinois, to Clarksville and Nashville, Tennessee, are published as through rates, governed by the Southern Classification, and that the rates to Clarksville (for depot delivery) and to Nashville are the same, viz:

1	2	3	4	5	6	A	B	C	D	E
73	63	50	38	31	25	27	30	21	20	28

VI.

That through rail-and-water rates from New York, N. Y., to Bowling Green, Ky., are formed by adding the rates from New York to Louisville via Norfolk, governed by the Official Classification, to the rates from Louisville to Bowling Green, governed by the Southern Classification and that said rates on Classes 1 to 6, inclusive, of the Official Classification, and on Classes 1 to E inclusive, of the Southern Classification are as follows, viz:

	1	2	3	4	5	6	A	B	C	D	E
Official classification from New York to Louisville, rail-and-water	65	57	44	31	26	22	..	..	..	..	..
Southern classification from Louisville to Bowling Green	55	47	42	37	32	30	30	30	20	15	30

That through all-rail rates are published from New York, N. Y., to Bowling Green, Ky., governed by the Southern Classification, and are as follows, viz:

1	2	3	4	5	6	A	B	C	D	E
130	112	92	72	62	55	55	55	45	40	60

That the rail-and-water rates from New York, N. Y., to Clarksville and Nashville, Tennessee, are published as through rates, governed by Official Classification, and that said rates to Clarksville (for depot delivery) and to Nashville are as follows, viz:

To—	1	2	3	4	5	6
Clarksville.	91	80	64	46	40	36
Nashville	91	78	60	42	36	31

That to Nashville the rail-and-water rates and all-rail-rates are the same; while to Clarksville, the all-rail rates are higher than the rail-and-water rates. Said all-rail rates to Clarksville, governed by Official Classification, are as follows:

1	2	3	4	5	6
101	88	70	50	44	39

170

VII.

That upon all traffic moving under class rates, from Chicago and New York, Bowling Green merchants are subjected to the payment of very much higher charges than either Clarksville or Nashville, as evidenced by the foregoing tables.

VIII.

That from St. Louis, Mo., to Bowling Green, Clarksville and Nashville, through rates are published governed by Southern Classification, the rates to Clarksville (for depot delivery) and to Nashville being the same. Said rates are as follows:

To—	1	2	3	4	5	6	A	B	C	D	E
Bowling Green.....	92	79	65	54½	47	42	42	42	29½	23½	45
Clarksville and Nashville	61	52	45	35	28	23	22	26	18	15	23

IX.

That the merchants of Bowling Green are interested in the rates on numerous commodities from numerous points of origin, and the following tabulation shows the said commodities, the points of origin from which shipments are made to Bowling Green, and the rates to Bowling Green, Clarksville and Nashville, respectively, viz:

Apples.

From Rural Retreat, Va., to—

	L. C. L.	C. L.
Bowling Green	50⅔	45⅔
Clarksville	36	36
Nashville	32	27

Navy Beans.

From Jackson, Mich., to—

Bowling Green.....	46	43
Clarksville and Nashville.....	42	34

Buggies.

From Cincinnati, Ohio, to—

Bowling Green	78	67
Clarksville and Nashville.....	..	48
K. D., boxed or crated, not exceeding 34 inches in height.....	53	..
K. D., boxed or crated, exceeding 34 inches but not exceeding 54 inches in height.....	79½	..

171 Cabbage.

From Evansville, Ind., to—		
Bowling Green	20	17½
Clarksville and Nashville	15	15

Coffee.

Roasted and Ground, also Coffee, N. O. S., in Single or Double Bags, via All-rail.

From New York, N. Y., to—		
Bowling Green	66	48
Clarksville	56	44
Nashville	48	36

Coffee, N. O. S., via Water-and-rail.

From New York, N. Y., to—		
Bowling Green	61	47
Clarksville	51	40
Nashville	48	36

Cultivators.

From Hamilton, Ohio, to—		
Bowling Green	46½	29
Clarksville and Nashville	46½	29½

Glassware.

From Cincinnati, Ohio, to—		
Bowling Green	39	30
Clarksville and Nashville	48	39

Harrows.

From Hamilton, Ohio, to—		
Bowling Green	46½	29
Clarksville and Nashville	46½	29½

White Lead.

From Cincinnati, Ohio, to—		
Bowling Green	52	46
Clarksville and Nashville	31	25
From St. Louis, Mo., to—		
Bowling Green	54½	47
Clarksville and Nashville	35	28

172 Nails (in Kegs).

From Pittsburg, Pa., to—

Bowling Green	41	35½
Clarksville and Nashville	30	28

Cove Oysters (All-rail).

From Baltimore, Md., to—

Bowling Green	65	45½
Clarksville	54	41
Nashville	46	33

Wall Paper.

From Cincinnati, Ohio, to—

Bowling Green	41	52
Clarksville and Nashville	48	31

From Worcester, Mass. (All rail), to—

Bowling Green	$1.12	73
Clarksville	88	56
Nashville	78	48

Wrapping Paper (Unprinted).

From Cincinnati, Ohio, to—

Bowling Green	46	43
Clarksville and Nashville	25	16½

From St. Louis, Mo., to—

Bowling Green	47	42
Clarksville and Nashville	28	19½

Canned Peas.

From Indianapolis, Ind., to—

Bowling Green	34½	23½
Clarksville and Nashville	43½	24½

Cast Iron Soil Pipe.

From Cincinnati, Ohio, to—

Bowling Green	31	22
Clarksville and Nashville	25	$2.45 per net ton, or 12¼ cents per 100 lbs.

173 Lead Pipe.

From Cincinati, Ohio, to—		
Bowling Green	46	46
Clarksville and Nashville	25	15

Wrought Iron Pipe.

From Cincinnati, Ohio, to—		
Bowling Green	31	31
Clarksville and Nashville	25	15

Plows.

From Evansville, Ind., to—		
Bowling Green	28	17½
Clarksville and Nashville	23	15

Irish Potatoes.

From Chicago, Ill., to—		
Bowling Green	37	32½
Clarksville and Nashville	32	27

Salt.

From Marine City, Mich., to—		
Bowling Green	39½	17½
Clarksville	40½	16
Nashville	40½	18

Canned Sardines.

From Eastport, Me., (all-rail) to—		
Bowling Green	89½	65
Clarksville	77½	60½
Nashville	69½	43

Seeds.

From Evansville, Ind., to—		
Bowling Green, clover seed	28	20
garden seed	29	27
grass seed	28	25
Clarksville and Nashville, grass, clover, millet and timothy	15	15

174 Double Shovels.

From Malta, Ohio, to—		
Bowling Green	59	33½
Clarksville and Nashville	59	31

Soap (Value Not Exceeding 5 Cents per Lb.).

From Chicago, Ill., to—		
Bowling Green	45	32½
Clarksville and Nashville	25	25

Soda, Bicarbonate.

From Syracuse, N. Y., to—		
Bowling Green	54	36½
Clarksville	48	29
Nashville	46	27

Syrup (Not Fruit Syrup) in Cans, Boxed.

From Chicago, Ill., to—		
Bowling Green	45	32½
Clarksville, glucose or corn syrup in barrels	27	..
Syrup, all kinds	..	25
Nashville, glucose or corn syrup in barrels	27	..
Syrup, all kinds	..	25

Tobacco.

From Cincinnati, Ohio, to—		
Bowling Green, tobacco unmfd. in cases	52	..
Tobacco leaf, in bulk, C. L. only	..	52
Clarksville	23	23
Nashville	20	20
From Evansville, Ind., to—		
Bowling Green, tobacco unmfd. in cases	40	..
Tobacco leaf, in bulk, C. L. only.	..	40
Clarksville	15	15
Nashville	12	12

175 Canned Tomatoes.

From Indianapolis, Ind., to—		
Bowling Green	34½	23½
Clarksville	43½	24½
Nashville	43½	24½

Farm Wagons.

From South Bend, Ind., to—		
Bowling Green	67	36
Clarksville	38	25
Nashville	38	25

Tinware, Packed, N. O. S.

From Cincinnati, Ohio to—		
Bowling Green	41	38
Clarksville and Nashville	48	31
From St. Louis, Mo., to—		
Bowling Green	51	41½
Clarksville and Nashville	52	35

Woodenware.

From Cincinnati, Ohio, to—		
Bowling Green	39	46
Clarksville and Nashville	39	25
From St. Louis, Mo., to—		
Bowling Green	43	47
Clarksville and Nashville	45	28

X.

That the rates on sugar from from New Orleans to Bowling Green and Louisville, Ky., are as follows:

Sugar.

From New Orleans, La., to—	L. C. L.	C.L.
Bowling Green	37	20
Louisville	23	17

XI.

That upon the following commodities, the rates from Bowling Green and from Nashville to the destinations shown are as follows:

176 Eggs.

Bowling Green to New York (all-rail)	$1.12	94
Nashville to New York (all-rail)	78½	78½
Nashville to New York (rail and water)	72½	72½

Dressed Poultry.

Bowling Green to New York (all-rail)	$1.22	$1.15
Nashville to New York (all-rail)	88	88
Nashville to New York (rail and water)	80	80

Tobacco, Mfd., Plug and Twist, in Boxes or Kegs.

Bowling Green to Cincinnati	41	41
Nashville to Cincinnati	36	36
Bowling Green to Evansville	29	29
Nashville to Evansville	24	24
Bowling Green to Louisville	29	29
Nashville to Louisville	21	21
Bowling Green to Memphis	35	35
Nashville to Memphis	27	27

XII.

That the rates on oranges from Jacksonville, Fla., to Bowling Green, Ky., and Louisville, Ky., are as follows:

From Jacksonville proper to—	L. C. L.	C. L.
Bowling Green	87	64
Louisville	73	49
From Jacksonville on oranges originating south of Jacksonville to—		
Bowling Green	84	61
Louisville	70	46

XIII.

That the rates on cattle and hogs from Bowling Green to Chicago, Ill., are not properly adjusted as related to Nashville in that in combining the rate from Bowling Green to the Ohio River and from the Ohio River to Chicago an additional charge of $2.00 per car is added to the rate of 15 cents per hundred pounds, accruing between the Ohio River and Chicago, while from Nashville no such charge is imposed; and also in that from Nashville to the
177 Ohio River, hogs are given the benefit of both single deck and double deck rates, while from Bowling Green to the Ohio River there are no double deck rates.

XIV.

That C. E. Fulton's Proportional Tariff No. 104-B I. C. C. A-43, filed February 4, 1910, effective March 15, 1910, and now in force names class and commodity rates which apply as proportional rates

from Chicago, Illinois, etc., to Ohio River Crossings, Cincinnati, Evansville, Louisville, etc., on all traffic destined to points in certain southern and southeastern states, including Clarksville and Nashville, Tenn. Said tariff is governed by Southern Classification and names class rates from Chicago, Ill., to Ohio River crossings, as follows:

In Cents per 100 lbs.

Classes.....	1	2	3	4	5	6	A	B	C	D	E
Rates	35	30	22	15	13	10	12	12	10	10	13

That C. E. Fulton's Local, Joint and Proportional Tariff No. 100-C, I. C. C. A-47, filed April 2, effective May 15, 1910, and still in force, governed by Official Classification, names local class rates from Chicago to Louisville, which local rates are applied on traffic from Chicago to Bowling Green, viz:

In Cents per 100 lbs.

Classes	1	2	3	4	5	6
Rates	41	35	26	18	16	13

XV.

That the rates from Bowling Green, Evansville, Louisville, and Nashville to Atlanta, Ga., Montgomery, Ala., and Jackson, Miss., governed by Southern Classification, are as follows:

In cents per 100 lbs.

To Atlanta, Ga., From	1	2	3	4	5	6	A	B	C	D	E	H	Per bbl. F
Evansville, Ind..... Louisville, Ky.....	98	87	78	63	52	41	28	36	28	24	48	48	48
Nashville, Tenn.....	66	59	54	43	35	29	20	28	21	17	33	35	34
Bowling Green, Ky.....	99	83	65	60	55	51	46	51	30	24	51	51	60

178

To Montgomery, Ala., From													
Evansville, Ind..... Louisville, Ky.....	98	87	78	62	50	41	28	34	26	22	44	39	44
Nashville Tenn.....	63	57	53	40	32	28	20	26	19	15	29	25	30
Bowling Green, Ky.....	102	85	66	61	56	52	46	49	30	24	52	47	60
To Jackson, Miss., From													
Evansville, Ind.....	95	81	67	57	47	41	33	33½	24½	23	32	53	49
Louisville, Ky.....	98	84	70	59	49	43	35	35½	27	25	34	55	54
Nashville, Tenn.....	83	72	60	51	42	37	31	30½	22	20	29	50	44
Bowling Green, Ky.....	128	111	94	82	70	63	57	56½	39	32	59	76	78

XVI.

That in so far as in a few isolated instances the rates to or from Bowling Green are substantially the same as the rates on similar commodities to or from Nashville and Clarksville, Tenn., they evidence the similarity of conditions existing at said three points respectively and the propriety of re-adjusting the rates to and from Bowling Green generally.

XVII.

That the rates herein set forth are unjust and unreasonable and in violation of Section One of the Act to Regulate Commerce, and that they are furthermore unduly prejudicial to the interests of the city of Bowling Green and unduly preferential to the interests of the cities of Clarksville and Nashville, Tennessee, and Louisville, Ky., and are in violation of Section 3 of the Act to Regulate Commerce; and that they furthermore constitute, in a majority of instances, greater charges for the shorter distance to or from Bowling Green, Kentucky, than for the longer distances to or from the cities of Clarksville and Nashville, Tennessee, and Louisville, Ky., such shorter distances being included within the longer distances and being over the same line, and in the same direction, said greater charges to or from Bowling Green being in violation of Section 4 of the Act to Regulate Commerce as amended June 18, 1910.

XVIII.

That the circumstances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Kentucky, are substantially similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tennessee, and Louisville, Ky.

Wherefore, complainant prays that said defendants be required to answer the charges herein set forth and that after due hearing and investigation, an order be entered commanding said defendants and each of them to wholly cease and desist from the aforesaid violations of law; to wholly cease and desist from charging the present unjust, unreasonable and excessive rates to and from Bowling Green, Kentucky; to wholly cease and desist from subjecting the
179 shippers, business men and consumers of Bowling Green to undue and unreasonable prejudice and disadvantage by continuing in effect the adjustment of rates herein set forth; and that your Honorable Commission adjudge said rates to and from Bowling Green to be unjust, unreasonable and unduly prejudicial; and establish for the future just and reasonable rates to and from the city of Bowling Green as related to Nashville and Clarksville, Tennessee; Louisville, Kentucky; and Evansville, Ind.; and for

such further relief as your Honorable Commission may deem just and complainant's interests appear to warrant.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION,
By W. C. SUMPTER, *President.*

T. W. & R. C. P. THOMAS,
Attorneys for Complainant,
Neale Building, Bowling Green, Ky.

EXHIBIT C.

Before the Interstate Commerce Commission.

I. C. C. Docket No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KENTUCKY, Complainants,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY et al., Defendants.

The Separate Answer of the Louisville & Nashville Railroad Company to the Above-entitled Complaint.

I.

Respondent, Louisville & Nashville Railroad Company, has no knowledge or information as to the allegations contained in paragraph I of the petition.

II.

Respondent admits that the allegations contained in paragraph II of the petition are substantially correct, except that the distance from Bowling Green to Nashville is 73 and not 72 miles, and that the distance from Bowling Green to Clarksville is 64 and not 60 miles.

III.

Respondent admits that it is a common carrier engaged in interstate commerce, and as such is subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and Acts amendatory thereof or supplementary thereto, but denies that it is
180 engaged in the transportation of property or passengers to New York City, Chicago, Boston, Philadelphia, Indianapolis, or other northern or eastern points, or to Jackson, Mississippi, though it admits that its connections do rea-h all of said points of destination, and as to the other allegations of paragraph III it admits them.

IV.

Respondent denies each and every allegation contained in paragraph IV of the petition.

V.

Respondent admits that the through rates from Chicago, Illinois, to Bowling Green, Kentucky, are formed by adding the rates from Chicago to Louisville, Kentucky, governed by the Official Classification, to the rates from Louisville, Kentucky, to Bowling Green, Kentucky, provided the shipments move by way of Louisville. Respondent denies, however, that the rates from Louisville to Bowling Green, Kentucky, are governed by the Southern Classification, and says that said rates are governed by the Southern Classification only to the extent that it is not in conflict with respondent's exceptions to said Southern Classification as published in Note 28 thereof.

Respondent admits that the rates on Classes 1 to 6, inclusive, governed by the Official Classification, from Chicago, Illinois, to Louisville, Kentucky, are correctly stated by complainants, as follows:

1	2	3	4	5	6
41	35	26	18	16	13

Respondent denies, however, that the rates from Louisville, Kentucky, to Bowling Green, Kentucky, are correctly set forth by complainants, but avers and says that the correct rates, as governed by the Southern Classification, and respondent's Exceptions thereto as contained in Note 28, are as follows:

1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
55	47	42	37	32	30	30	30	20	15	30	30	40	25	20	15	10

all of said rates being stated in cents per hundred pounds, excepting Class F, which is stated in cents per barrel.

Respondent denies that the rates from Chicago, Illinois, to Clarksville and Nashville, Tennessee, are published as through rates governed by the Southern Classification, but on the contrary avers and says that said rates are constructed on combination of published tariff rates to and from Evansville, Indiana, as follows:

181 To	1	2	3	4	5	6	A	B	C	D	E	H	F
Evansville	35	30	22	15	13	10	12	12	10	10	13	15	20
Beyond	38	33	28	23	18	15	15	18	11	10	15	21	20
Total	73	63	50	38	31	25	27	30	21	20	28	36	40

stated in cents per hundred pounds excepting Class F, which is stated in cents per barrel.

VI.

Respondent admits that through rail-and-water rates from New York, New York, to Bowling Green, Kentucky, are formed by add-

ing the rates from New York, New York, to Louisville, Kentucky, governed by the Official Classification, to the rates from Louisville to Bowling Green, but says that the latter rates are governed by the Southern Classification only when it is not in conflict with respondent's exceptions thereto as contained in Note 28. Respondent admits that the rail-and-water rates on Classes 1 to 6, inclusive, from New York, New York, to Louisville, Kentucky, are as follows:

1	2	3	4	5	6
65	57	44	31	26	22

stated in cents per hundred pounds.

Respondent avers and says that the rates from Louisville, Kentucky, to Bowling Green, Kentucky, as governed by the Southern Classification and respondent's exceptions thereto as contained in Note 28, are:

1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
55	47	42	37	32	30	30	30	20	15	30	30	40	25	20	15	10

said rates being stated in cents per hundred pounds, excepting Class F, which is stated in cents per barrel.

Respondent admits that through all-rail rates are published from New York, New York, to Bowling Green, Kentucky, governed by the Southern Classification, as follows:

1	2	3	4	5	6	A	B	C	D	E	H	F
130	112	92	72	62	55	55	55	45	40	60	65	90

stated in cents per hundred pounds, excepting Class F, which is stated in cents per barrel.

Respondent admits that the rail-and-water rates from New York to Clarksville (for depot delivery) and to Nashville, Ten-
182 nessee, governed by Official Classification, are published as through rates in Agent Ryan's Tariff I. C. C. No. 23, as follows:

To	1	2	3	4	5	6
Clarksville (depot delivery)	91	80	64	45	40	36
Nashville	91	78	60	42	36	31

stated in cents per hundred pounds.

Respondent further admits that to Nashville the rail-and-water rates and all-rail rates are the same; while to Clarksville, the all-rail rates are higher than the rail-and-water rates; said all-rail rates to Clarksville, governed by Official Classification, being as follows:

1	2	3	4	5	6
101	88	70	50	44	39

stated in cents per hundred pounds.

VII.

Respondent admits the allegations contained in paragraph VII of the petition, only insofar as the rates to all of said points are governed by the same classification, and says that where the rates are not governed by the same classification it is not possible to determine from a comparison of the class rates whether the rates to Bowling Green are higher or lower than to Nashville and Clarksville, and that the facts can only be ascertained by comparing the actual rates applied to each and every commodity. Respondent avers, however, that where the rates to Bowling Green are different from the rates to Nashville and Clarksville, whether the difference makes Bowling Green higher or lower, the difference is fully justified by the circumstances and conditions under which the rates were established and are maintained; and respondent specifically avers that all of its existing rates to Bowling Green are fair and reasonable, and not excessive, unreasonable or unjustly discriminatory.

VIII.

Respondent says that the allegations contained in paragraph VIII of the petition are true, except that complainant has failed to set forth the rates on all the various classes, and except further that the rates to Bowling Green are governed by the Southern Classification only insofar as it is not in conflict with respondent's exceptions thereto as contained in Note 28.

Respondent says that the class rates from St. Louis, Missouri, to Bowling Green, Kentucky, governed by the Southern Classification and Note 28 exceptions thereto, are as follows:

183

1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
92	79	65	54.5	47	42	42	42	29.5	23.5	45	47.5	59	33.5	35	22	16

and to Clarksvile (for depot delivery) and Nashville, Tennessee, governed by the Southern Classification:

1	2	3	4	5	6	A	B	C	D	E	H	F
61	52	45	35	28	23	22	26	18	15	23	31	34

IX.

Respondent avers that the list of rates set forth in paragraph IX of the petition contains numerous errors and inaccuracies, and respondent prays leave to hereafter file a supplemental answer pointing

out said errors and inaccuracies and setting forth the correct rates between the points and on the articles specified.

X.

Respondent admits the allegations contained in paragraph X of the petition.

XI.

Respondent admits the allegations contained in paragraph XI of the petition.

XII.

Respondent admits that the rates on oranges from Jacksonville, Florida, to Louisville, Kentucky, are as stated but avers and says that there are no through rates published on oranges from Jacksonville proper or from beyond to Bowling Green, Kentucky; that the rates are constructed on lowest combination; that rates from Jacksonville proper, are, on carloads, 60.2 cents and on less carloads 82.2 cents per box of 80 pounds, and not 64 and 87 cents respectively, as stated in the petition; and that from Jacksonville, when from beyond, the rates are, on carloads, 57.2 cents and on less carloads 79.2 cents per box of 80 pounds, and not 61 and 84 cents respectively, as stated in the petition. Respondent says that the rates specified by it are the combination of tariff rates to and from Nashville, Tennessee, as contained in Florida Orange Tariff No. 2, I. C. C. No. 2, issued by C. McD. Davis, Agent, and L. & N. Tariff G. F. O. 1535, I. C. C. A-11547.

XIII.

Respondent denies that the rates on cattle and hogs from Bowling Green, Kentucky, to Chicago, Illinois, are not properly adjusted as related to Nashville as alleged in the petition. Respondent says that there are no through rates published on cattle and hogs from either Bowling Green, Kentucky, or Nashville, Tennessee, to Chicago, Illinois; that on cattle, from Bowling Green the lowest combination is made up of $30.00 per car to Louisville, plus bridge
184 toll of $2.00 per car Louisville to Jeffersonville or New Albany, plus 15 cents per hundred pounds beyond; and that shipments moving from Nashville over the same route would be charged $31.00 per car to Louisville, plus $2.00 bridge toll Louisville to Jeffersonville or New Albany, plus 15 cents per 100 pounds thence to Chicago, but that Nashville shipments may also move by way of Evansville upon the same total rate made up of $33.00 per car, plus 15 cents per 100 pounds beyond.

Respondent says that on hogs, single deck, the rate from Bowling Green to Chicago is made up of $35.00 per car to Louisville, plus $2.00 bridge toll to Jeffersonville or New Albany, plus 15 cents per 100 pounds beyond; that no double deck rates are in effect from Bowling Green; and that both single deck and double deck rates are available at Nashville as follows:

Hogs, single deck, to Louisville, $20.00 per car, plus $2.00 bridge

toll to Jeffersonville or New Albany, plus 15 cents per 100 pounds beyond, or to Evansville $22.00 per car plus 15 cents per 100 pounds beyond; hogs, double deck, to Louisville, $30.00 per car, plus $2.00 bridge toll to Jeffersonville or New Albany, plus 15 cents per 100 pounds beyond, or to Evansville $32.00 per car plus 15 cents per 100 pounds beyond.

Respondent avers that the transportation of hogs in double deck cars, especially over long distances in warm weather, is accompanied with extraordinary risk to the carrier of death, deterioration, shrinkage in weight, and other damage resulting from the excessive heat and over crowding of the animals, and also from the possibility of the upper deck giving way under the heavy load and killing or injuring the animals underneath; for which reason, and others, respondent has always been unwilling to transport hogs in double deck cars over its lines except where competition with other rail carriers compels respondent to accept and transport them in that fashion as a condition of participating in the business. Respondent avers that the double deck rates were established at Nashville by reason of competition with other rail carriers; that the competition at Bowling Green is wholly with water carriers, which do not transport hogs in such fashion, and that respondent's failure to provide rates for double deck hogs from Bowling Green and other points similarly situated, is because of respondent's unwillingness to accept voluntarily the extraordinary risk hereinabove described.

XIV.

Respondent admits the allegations contained in paragraph XIV of the petition, except that respondent avers and says that C. E. Fulton's Proportional Tariff No. 104-B, I. C. C. A-43, has been cancelled by Tariff No. 104-C, I. C. C. No. A-71, effective June 15, 1911, and that Joint and Proportional Tariff No. 100-C, I. C. C. No. A-47, has been cancelled by Joint and Proportional Tariff No. 100-E, I. C. C. No. A-70, effective April 25, 1911.

XV.

Respondent admits that the allegations contained in paragraph XV of the petition are substantially correct.

185

XVI.

Respondent denies each and every allegation contained in Paragraph XVI of the petition, and particularly that where the rates to or from Bowling Green are substantially the same as to or from Nashville and Clarksville, Tennessee, they evidence the similarity of conditions existing at said three points respectively and the propriety of re-adjusting the rates to and from Bowling Green generally. Respondent says that its rates to and from Bowling Green, Nashville and Clarksville have been made wholly with regard to the circumstances and conditions existing at each of said points; that the circumstances and conditions existing at Bowling Green are in no

material respect similar to those existing at Nashville or Clarksville, and that wherever the rates to and from Bowling Green are substantially the same as to or from Nashville or Clarksville, it is a purely accidental circumstance and not one from which the conclusion can logically be drawn that the rate on any commodity to or from Bowling Green should be substantially the same as to or from Nashville or Clarksville, or that the rates to and from Bowling Green generally, or otherwise, are in need of re-adjustment.

XVII.

Respondent denies that any of the rates complained of are unjust or unreasonable or in violation of Section 1 of the Act to Regulate Commerce, or that they are unduly prejudicial to the interests of the city of Bowling Green or unduly preferential to the interests of the cities of Clarksville or Nashville, Tennessee, or Louisville, Kentucky, or in violation of Section 3 of the Act to Regulate Commerce, or that they constitute in a majority of instances or any instance greater charges for the shorter distance to or from Bowling Green, Kentucky, than for the longer distances to or from Clarksville or Nashville or Louisville, in violation of Section 4 of the Act to Regulate Commerce as amended June 18, 1910. With respect to the last mentioned allegation of the petition, respondent says that all of its rates to and from Bowling Green are embraced in the list of tariffs as to which respondent has filed an application with this Honorable Commission for relief from the provisions of the fourth section of the Act to Regulate Commerce as amended June 18, 1910, said application being entered upon the Commission's records as No. 1952.

XVIII.

Respondent denies that the circumstances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Kentucky, are substantially or at all similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville or Nashville, Tennessee, or Louisville, Kentucky.

Wherefore, Respondent denies that complainant is entitled to the relief prayed for,

And having fully answered prays to be hence dismissed.

ALBERT S. BRANDEIS,
Solicitor for Respondent.

186 EXHIBIT D.

A transcript of the hearings held in I. C. C. Docket No. 4310 and with reference to Fourth Section Application No. 1952, at Bowling Green, Kentucky, on November 27 and 28, 1911, before Special Examiner G. P. Boyle, and at Bowling Green, Kentucky, on April 29, 1912, before Special Examiner E. L. Gaddess.

This exhibit, on account of the great size and volume of the transcripts, is not now filed, but will be filed when and if required.

EXHIBIT E.

Opinion No. 1940.

Interstate Commerce Commission.

No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY et al.

Fourth Section Application No. 1952.

Submitted March 6, 1912. Decided June 4, 1912.

1. The complaint alleges that the freight rates in general to and from Bowling Green, Ky., are not established with proper relation to the rates to and from Clarksville and Nashville, Tenn., Evansville, Ind., and Louisville, Ky. By Fourth Section Application No. 1952 the Louisville & Nashville Railroad, for itself and its connections, seeks authority to continue to charge lower rates to and from Louisville, Clarksville, and Nashville than to and from Bowling Green. The defendants seek to justify this discrimination against Bowling Green on the ground that there is water competition at the other points which does not exist at Bowling Green and competition of rail carrier with rail carrier, intensified by market competition.

2. The Commission finds that the facts of record reveal a community of interest between the water and rail carriers serving Bowling Green, the effect of which is to deprive it of the benefit of water competition which it should enjoy under normal and natural conditions, and that under a situation such as disclosed in this proceeding, the rail carrier is estopped from justifying its discrimination against Bowling Green in favor of Louisville and Clarksville on the ground that its rates to and from all three points properly reflect the water competition existing at them. It is evident to the Commission that were it not for the affiliation between the rail carrier and the water carrier there would not be sufficient actual dis-
187 similarity between the circumstances and conditions surrounding the transportation by water to and from Bowling Green, Nashville, and Clarksville to justify relieving the Louisville & Nashville Railroad from the operation at Bowling Green of the long-and-short-haul clause of the act to regulate commerce.

3. The railroad competition at Louisville and Clarksville is not of sufficient force and effect to justify a lower scale of rates at those

points than at Bowling Green on traffic the movement of which is through Bowling Green.

4. The fact that Nashville is recognized as a commercial center of more importance than Bowling Green and enjoys a far greater volume of trade does not warrant the continuance of a relation of rates between that point and Bowling Green which results in undue preference to the one and undue prejudice to the other. The law comtemplates relatively fair rates as between different points, and one of its prime objects is to cure the practice of carriers, formerly so prevalent, of favoring one point over another when the favored point possesses no advantages over the other with respect to real competition either by water or rail.

5. The Commission is of the opinion that the defendants' rates to and from Bowling Green are unjustly discriminatory in and to the extent that they exceed the rates contemporaneously maintained as applicable through Bowling Green to and from Nashville.

6. The rate of 20 cents on sugar from New Orleans to Bowling Green does not bear an unreasonable relation to the rate of 17 cents to Louisville, and the defendants will be relieved from the operation of the fourth section of the act so far as this traffic is concerned.

7. The rates to Montgomery, Ala., from Bowling Green, as compared with the rates to Montgomery from Clarksville, are unjustly discriminatory, and for the future the rates from Bowling Green to Montgomery should not exceed the rates contemporaneously maintained from Clarksville to Montgomery.

8. On oranges from Jacksonville, Fla., to Bowling Green the defendants are not entitled to apply a rate in excess of the rate contemporaneously maintained on the same commodity from Jacksonville to Louisville.

9. The evidence respecting complainant's request for a double-deck car rate on hogs from Bowling Green to Chicago is not sufficient to enable the Commission to reach a conclusion in the matter. This item in the complaint can not be disposed of without going into the larger question of the use of double-deck cars as such.

T. W. & R. C. P. Thomas for complainant.

W. A. Colston for Louisville & Nashville Railroad Company.

D. P. Connell for Lake Shore & Michigan Southern Railway Company; Michigan Central Railroad Company; New York Central & Hudson River Railroad Company; and West Shore Railroad Company.

C. E. Fulton for Chicago-Ohio River lines.

188 *Report of the Commission.*

MEYER, *Commissioner:*

The issue in this proceeding is whether the freight rates in general to and from Bowling Green, Ky., are established with proper relation to the rates to and from Clarksville and Nashville, Tenn., Evansville, Ind., and Louisville, Ky. The complainant, a corporation composed

of business men located at Bowling Green, by petition, filed August 16, 1911, submits a comparison of all class rates from Chicago, St. Louis, and New York to Bowling Green, Clarksville, and Nashville, the carload rates on 31 commodities from points in New York, Pennsylvania, Ohio, Virginia, Michigan, Indiana, Missouri, Massachusetts, Illinois, and Maine to the same destinations; the rate on sugar from New Orleans, La., to Bowling Green and Louisville, Ky., and on oranges from Jacksonville, Fla., to the latter points. On outbound traffic the complaint compares the rates from Bowling Green with those from Nashville on cattle and hogs to Chicago, on eggs and dressed poultry to New York, on tobacco to Cincinnati, Evansville, Louisville, and Memphis, and on all classes, I to F, inclusive, from Bowling Green, Nashville, Evansville, and Louisville to Atlanta, Montgomery, and Jackson.

These comparisons show that the rates to and from Bowling Green are higher than the rates to and from the other points mentioned, and the petitioner alleges that they are "unduly prejudicial to the interests of the city of Bowling Green and unduly preferential to the interests of the cities of Clarksville and Nashville, Tenn., and Louisville, Ky., and are in violation of Section 3 of the Act to Regulate Commerce"; also that such rates constitute "in a majority of instances greater charges for the shorter distance to or from Bowling Green, Ky., than for the longer distance to or from Clarksville and Nashville, Tenn., and Louisville, Ky., such shorter distance being included within the longer distance and being over the same line and in the same direction, said greater charges to or from Bowling Green being in violation of Section 4 of the Act to Regulate Commerce as amended June 18, 1910." The complaint seeks an order establishing for the future just and reasonable rates to and from Bowling Green as related to Nashville, Clarksville, Louisville, and Evansville.

The defendants, which are the various carriers engaged in the transportation of passengers and property by rail and rail and water from and to the points in question, deny the alleged violations of the act and contend that the circumstances and conditions surrounding the movement of traffic to and from Bowling Green as compared with the other points named differ to an extent sufficient to justify the higher scale of rates to and from Bowling Green.

Bowling Green is the county seat of Warren County, Ky., and is located on the main line of the Louisville & Nashville Railroad, 114 miles south of Louisville, 73 miles north of Nashville, and 64 miles
189 northeast of Clarksville. It is situated at the head of navigation on Barren River, which empties into the Green River at Woodbury; the Green, in turn, emptying into the Ohio River at a point near Evansville. According to the United States census of 1910, the population of Bowling Green was at that time 9,173, while the population of Clarksville was 8,548 and Nashville 110,364. Nashville is also located on the main line of the Louisville & Nashville Railroad, as well as on the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad. Clarksville is 63 miles northwest of Nashville and is on the Memphis

Branch of the Louisville & Nashville Railroad and on the Tennessee Central Railroad. Nashville and Clarksville are both situated on the Cumberland River, which flows into the Ohio River at a point above Paducah, Ky. From Evansville by water the distance to Bowling Green is about 190 miles, to Clarksville 285 miles, and to Nashville 350 miles. To the mouth of the Cumberland River from Clarksville the distance is about 143 miles and from Nashville about 210 miles.

By reason of its location, Bowling Green is intermediate to Clarksville and Nashville on traffic moving via the line of the principal defendant, the Louisville & Nashville Railroad, from or to the east or north to or from the latter points. It is likewise intermediate to Louisville on traffic moving to that point via the main line of the Louisville & Nashville Railroad from or to the south or southwest. The question of primary concern, therefore, is whether the facts developed in this proceeding are such as to justify the Commission in relieving the defendants from the operation of the long-and-short-haul clause of the law so far as the rates to and from Bowling Green are concerned.

By Fourth Section Application No. 1952, filed December 17, 1910, the defendant Louisville & Nashville Railroad, for itself and its connections, seeks authority to continue to charge lower rates to and from Louisville, Clarksville, and Nashville than to and from Bowling Green. While the application seeks similar authority with respect to many other points, only this portion of it will be considered in the present proceeding and no opinion with respect to points other than Bowling Green will be expressed herein.

The present all-rail class rates from New York City to Bowling Green, governed by the Southern Classification, are, in cents per hundred pounds, as follows:

Class....	1	2	3	4	5	6	A	B	C	D	E	H
Rate....	130	112	92	72	62	55	55	55	45	40	60	65

Following are the rail-and-water rates from New York City to Clarksville (depot delivery) and to Nashville, governed by official classification:

Class	1	2	3	4	5	6
To Clarksville (depot delivery)..	91	80	64	46	40	36
To Nashville	91	78	60	42	36	31

190 To Nashville the rail-and-water and the all-rail rates are the same, while to Clarkesville the all-rail rates are higher than the rail-and-water rates, said all-rail rates governed by official classification being as follows:

Class	1	2	3	4	5	6
Rate.....	101	88	70	50	44	39

Differences in favor of Nashville and Clarksville that are similar to the foregoing are shown in some of the commodity rates. For instance, the rate on eggs from Bowling Green to New York in carloads is 94 cents, minimum 10,000 pounds, and on poultry, dressed, $1.12, minimum 20,000 pounds; from Nashville to New York the rate on eggs is 78½ cents in any quantity, while on dressed poultry the rate is 88 cents in any quantity. On butter from Nashville to Louisville the rate is 28 cents a. q., while from Bowling Green to Louisville the rate is 55 cents a. q. On eggs from Nashville to Louisville the rate is 24 cents a. q., from Bowling Green to Louisville it is 47 cents a. q., and from Bowling Green to Nashville 39 cents a. q., From New Orleans to Louisville and Nashville the rate on sugar in carloads is 17 cents, minimum 33,000 pounds, and to Bowling Green 20 cents, minimum 24,000 pounds. On nails from Pittsburg to Bowling Green the rate is 35½ cents minimum 36,000 pounds, as against 28 cents, same minimum to Nashville.

The defendants seek to justify this discrimination against Bowling Green on the ground that there is water competition at Nashville, Clarksville, Louisville, and Evansville which does not exist at Bowling Green, and competition of rail carrier with rail carrier, intensified by market competition. They argue that the rates complained of are reasonable in and of themselves, while the rates to the favored points are not lower than it is necessary that they should be in order to meet the competition existing there.

It appears from the mass of testimony submitted that from 1841 to the present time the Green and Barren rivers from Bowling Green to the Ohio River have been used for the purposes of navigation. In that year the original system of slack-water navigation on these rivers, including four locks in Green River and one lock in Barren River, with a total length of pools of approximately 200 miles, was completed by the State of Kentucky. The State retained control and management of the system until 1868, when it was leased to the Green and Barren River Navigation Company for a term of 30 years.

The Act of the Kentucky Legislature approved February 20, 1886, ceded the entire system to the United States upon condition that the unexpired portion of the lease to the navigation company be purchased by the United States. The rivers and harbors act of August 11, 1888, appropriated $135,000 "for the purchase of the improvements known as the Green and Barren river improvements." This purchase was consummated on December 11, 1888, and the government assumed control of the rivers, the improvements therein, and the property formerly owned by the State. During the 21
191 years from 1889 to 1909, inclusive, the federal government expended in the interest of the navigation of these rivers the sum of $1,715,905.76. Complainant confidently asserts that as a result of these expenditures "there exists upon Green and Barren rivers to-day, both as to efficiency and continuity, a system of slack-water navigation unsurpassed by any river or system of rivers in the United States." In the annual report of the chief of engineers for the United States army for 1910, it is stated that boats up to 35 feet

in width, 138 feet in length, and draft of 5 feet may navigate from Bowling Green to the Ohio River.

Unlike the Cumberland River, which creates the water competition at Nashville and Clarksville, the Green and Barren rivers are open all the year and may be plied continuously by vessels. This is accounted for, testified the president of complainant association, by the fact that the headwaters of the Green River drain 6,000 square miles of cave territory—

the only territory like it in the world, of any size, that the streams have a temperature of 54 degrees the year round, that with the great depth of the river 150 miles up the stream, which runs from 20 to 30 feet deep, and 60 feet in some places, gives a large body of water that is very difficult to freeze, so much so that boats come from the south—a very unusual thing to do, at first sight—to harbor into the mouth of Green River. That is a well known fact, that they come out of the Cumberland and Tennessee up here, and when the Cumberland and Tennessee are frozen Green River is open. There is no other river like it that I know of on the globe.

The navigability of the Cumberland River has been previously discussed by the Commission, Chamber of Commerce of Chattanooga v. S. R'y Co., 10 I. C. C., 111, decided March 12, 1904. Since that time it has been determined by the federal government that the system of locks and dams of the upper river must be extended considerably in order to make the river below Nashville more available for navigation. With respect to this matter the annual report for 1910 of the chief of engineers for the United States army states that the rivers and harbors act of June, 1910, modified the old project of canalization, under which lock A has already been placed in operation, by providing for the completion of the scheme—

By the construction of 5 additional locks, beginning with lock B, about 51.5 miles below Nashville and ending with lock F, about 147 miles below Nashville, thus reducing the total number of locks from 7 to 6. The proposed locks are to be 52 feet wide and 280 feet long, with lifts varying from 10 to 13.1 feet. It also includes dredging the rest of the river to the mouth (about 46 miles) to a depth of 6 feet at low water, the total estimated cost of the additional improvements being $3,164,882.40.

This report of the chief — engineers further state- that—

the Cumberland River below Nashville is usually navigable for all steamboats plying on it for six months in each year; for boats not drawing over 3 feet from six to eight months and for boats drawing 16 inches or less, the whole year. General navigation,
192 however, is practically closed for several months each year during low water.

The record contains no definite testimony as to the cost of transportation on the Cumberland River as compared with the Green and Barren rivers. While the boats operating on the Cumberland are doubtless of greater capacity than the boats operating on the Green and Barren rivers, this advantage is probably offset by the fact that

navigation on the latter rivers is continuous. A river captain of many years' experience in the steamboat business on the Green and Barren rivers testified that he spent one year operating a boat on the Cumberland River between Nashville and Evansville and that he made one round trip a week, and in his opinion freight could be carried "as cheap or cheaper" by boats on the Green and Barren rivers than on the Cumberland. He further stated that the fuel coal used by the Cumberland River steamboats comes from the lower Green River. Between Bowling Green and Evansville the boats regularly in operation make two round trips a week.

From the facts before the Commission regarding these three rivers it seems fair to conclude that the potential competition on the Green and Barren rivers is as great as on the Cumberland River.

The actual movement of freight on these rivers is now a great deal less than it was formerly. It was testified that on the Green and Barren rivers in 1884 the total amount of freight delivered by the river at Bowling Green was 75,000 tons as against 27,188 tons in 1910. It is conceded that the competition existing on the three rivers is now largely potential. As to the Cumberland River defendants explain that—

Its active competition could be revived at any time, within a reasonable period, of course, should there be any marked or great increase in freight rates by rail.

There appears to be no doubt that the water competition of the Cumberland River has a controlling influence on the Nashville and Clarksville rates. In Chamber of Commerce of Chattanooga v. S. R'y Co., supra, the Commission said:

Before the rail lines were extended to Nashville, traffic from eastern seaboard cities came by the Pennsylvania Railroad to Pittsburg and thence by the Ohio and Cumberland rivers to Nashville. When the Nashville, Chattanooga & St. Louis road was opened between Chattanooga and Nashville, which was prior to the completion of the Louisville & Nashville road from Cincinnati and Evansville to Nashville, the competition it met on traffic from the East to Nashville was that via the Cumberland and Ohio rivers, and when the Louisville & Nashville road was subsequently constructed from Cincinnati to Nashville, the evidence shows that the competition of the Cumberland and Ohio rivers was "transferred" to that road and that the Nashville, Chattanooga, & St. Louis road had then to meet the rates of the Louisville & Nashville road thus influenced by Cumberland and Ohio River Competition.

The complainants contend that—

the reason why the river has not been a potential influence in affecting the freight rates to Bowling Green since the river was
193 made free by the United States Government is because the Louisville & Nashville Railroad Company through the Evansville & Bowling Green Packet Company has frustrated the competition.

Replying to this charge the defendants in their brief say:

The flimsiness and absurdity of the claim that the Louisville & Nashville Railroad Company controls the transportation on the

Green and Barren rivers is shown by complainants' own argument, etc.

In substantiation of the complainants' allegation these facts are shown of record:

Shortly after the federal government acquired the Green and Barren rivers, the Evansville & Bowling Green Packet Company was organized and since then has operated two steamboats that carry passengers and freight between Bowling Green and Evansville, each making two round trips a week between these points. For many years past this has been the only line operating regularly on the rivers. The president of the packet company was also division general freight agent of the Louisville & Nashville Railroad at Evansville and still holds both positions. Throughout this period, according to the testimony of several witnesses, all of whom are shippers located at Bowling Green, neither the agent of the packet company nor the agent of the Louisville & Nashville Railroad Company at Bowling Green solicited any shipments except in 1901.

The veteran steamboat captain previously referred to stated that he was employed for two years as agent of the packet company at Bowling Green and during his service received instructions not to solicit inbound freight against the Louisville & Nashville Railroad other than that originating at Evansville, nor outbound freight other than that destined to Evansville. He said that before he received his instructions he contracted with a shipper at Franklin, 20 miles from Bowling Green, to ship a large quantity of tobacco to Louisville, but was later directed by his company not to carry out the contract, although the rate agreed upon had been fixed after a conference which included the president of the packet company and a representative of the Louisville & Nashville Railroad Company, who is now its freight traffic manager.

In 1901 the merchants and shippers of Bowling Green purchased the steamship Sun to operate in Green and Barren rivers as an independent boat. It is agreed that the purpose of this action was to compel, by actual water competition, the publication of lower rates by the Louisville & Nashville Railroad. The Sun commenced operations under lower freight rates than were charged by the packet company. The record shows that immediately thereafter both the Louisville & Nashville Railroad and the packet company reduced their rates. It is undisputed that the packet company offered, and actually hauled, freight for nothing, with a free pass to the shipper as a bonus, while the reduction in the rail carrier's rates was very material. As stated in complainants' brief—

194 The temptation for immediate advantage was too strong for the general public as well as for a few of the merchants who had agreed to patronize the Sun. The railroad and line of boats which were hauling freight at almost any price got the business, and the steamer Sun after 8 or 10 months, was tied to the bank.

A wholesale merchant at Bowling Green testified that he was informed by a stockholder of the packet company, shortly after the Sun ceased operations, that the railroad company did not own the packet company, but it guaranteed the packet company against loss

in making the fight on the Sun. Since this encounter in 1901 no independent vessel has ventured to enter the trade against the boats of the Evansville & Bowling Green Packet Company on the Green and Barren rivers for traffic from Bowling Green to Evansville or from Evansville to Bowling Green.

On January 30, 1907, a committee representing the complainant association conferred with the general freight agent of the Louisville & Nashville Railroad at Louisville with reference to the rate situation at Bowling Green. At the hearing of this case the counsel for complainant requested this official, who testified for defendant, to submit in evidence any letter that he may have written to the president of the packet company following the aforesaid conference. The counsel for defendant opposed this request, and after some little discussion it was agreed that if such a letter could be found a copy would be furnished for the information of the Commission. Subsequently the letter in question was located and transmitted to the Commission. Its bearing upon the charge that the Louisville & Nashville Railroad Company influences the rates of the packet company is direct, and we feel that it should, therefore, be incorporated in this report. The letter and reply thereto are as follows:

(Copy.)

Fox.

Louisville & Nashville Railroad Co.

LOUISVILLE, KY., January 31, 1907.

Capt. Lee Howell, President E. & B. G. Pkt. Co., Evansville, Ind.

Bowling Green, Ky., Rates.

DEAR SIR: I had a conference at Louisville yesterday with a committee representing the Bowling Green Business Men's Protective Association, concerning the existing rates from the Ohio River and St. Louis to Bowling Green. As a result of that conference we agreed to make a few changes in the existing rates, which I mention below:

Syrup and molasses, c. l.—Our present rail rates are made on regular basis, as compared with community rates of 15 cents per hundred pounds by boat, Evansville to Bowling Green. The syrup
195 which is actually shipped all moves in cans from St. Louis, and it was stated that the boats have been charging 12½ cents from Evansville to Bowling Green, that is to say, the tariff rate on canned goods. I think it is more than likely this statement is altogether correct. I do not mention it with any purpose of charging the boat line with bad faith. The mistake is not unnatural at all and is readily accounted for. Considering the conditions existing at Bowling Green just now I did not believe it wise to suggest that your boats had better handle this business hereafter at 15 cents,

but let it stay at 12½ cents, but it was arranged that we would reduce our rail rate, basing it upon a rate of 12½ cents, Evansville to Bowling Green.

Woven wire fencing.—We are carrying at this time rate of 25 cents per hundred pounds Louisville to Bowling Green on woven wire fencing, carloads, also a rate of 20 cents per hundred pounds Louisville to Bowling Green on barbed wire, carloads. I do not believe this difference is justifiable, and, as a matter of fact, the woven wire fencing is better freight and no more valuable than barbed wire. Therefore advised the committee that we would make the rate from Louisville to Bowling Green on woven wire fencing, c. l., 20 cents, or the same as on barbed wire, carload.

Vinegar, c. l.—Your present rate by boat Evansville to Bowling Green, I believe, is 15 cents, though you carry a commodity rate of 12½ cents on groceries n. o. s., carloads. I understand there is actually no movement from Evansville to Bowling Green by boat, nor is there likely to be any. I thought, therefore, we would base our rate as upon a commodity rate of 12½ cents by boat from Evansville, making 17½ cents by rail from Louisville. I trust this will be satisfactory to you.

Yours truly,

(Signed) D. M. GOODWYN,
General Freight Agent.

Evansville & Bowling Green Packet Co.

[63060.]

EVANSVILLE, IND., Feb. 11, 1907.

Mr. D. M. Goodwyn, G. F. A., L. & N. R. R. Co., Louisville, Ky.

Bowling Green, Ky., Rates.

DEAR SIR: I have your favor of January 31st—Fox, and have noted the rates you propose to establish to Bowling Green, Ky.

I have no objection to the rates you propose to establish to Bowling Green.

Yours truly,

(Signed) LEE HOWELL, *President.*

The conclusion is inevitable, from a review of the facts concerning the alleged relation between the packet company and the
196 Louisville & Nashville Railroad, that the rail carrier has had and apparently still retains a dominating influence over the water carrier with respect to the making of rates on traffic in which the rail carrier may be interested. The defendants' argument that it fairly meets the competition which exists at Bowling Green loses its force when we consider that such competition is purely artificial and that defendants' own action has removed the element of real competition which presumably otherwise would exist. We believe the record reveals a community of interest between the water and the

rail carriers, the effect of which is to deprive Bowling Green of the benefit of water competition, which it should enjoy under normal and natural conditions, and that under a situation such as this the rail carrier is estopped from justifying its discrimination against Bowling Green in favor of Nashville and Clarksville on the ground that its rates to and from all three points properly reflect the water competition existing at them. In the case of Interstate Commerce Commission v. L. & N. R. R. Co., 190 U. S. 273, the United States Supreme Court, speaking through Mr. Justice White, now Chief Justice, said:

What the fourth section of the Act to Regulate Commerce has reference to is an actual dissimilarity of circumstances and conditions, not a conjectural one. Of course, if by agreements or combinations among carriers it were found that at a particular point rates were unduly influenced by a suppression of competition, that fact would be proper to consider in determining the question of undue discrimination and the reasonableness per se of the rates at such possible competitive points.

It is evident to the Commission that were it not for the relation of the rail carrier to the water carrier there would not be sufficient actual dissimilarity between the circumstances and conditions surrounding the transportation by water to and from Bowling Green, Nashville and Clarksville to justify relieving the defendant from the operation at Bowling Green of the long-and-short-haul clause of the act.

Turning now to defendants' claim that there exists at Nashville and Clarksville railroad competition that does not prevail at Bowling Green, the record shows that the Tennessee Central Railroad was completed in 1903 and its entry into Nashville and Clarksville had no influence upon the rates at such points. The general freight agent of the Louisville & Nashville Railroad testified that the present rates have remained unchanged throughout the period beginning prior to the construction of the Tennessee Central, and admitted that the city of Nashville, "got stuck" when it contributed a million dollars to secure this additional rail carrier. The termini of this road are Emory Gap and Harriman, Tenn., on the east, and Hopkinsville, Ky., on the west. It was formerly leased by the Illinois Central and Southern railways, but is now independent.

Except for the Nashville, Chattanooga & St. Louis Railway at Nashville, no rail carriers other than the Tennessee Central and the Louisville & Nashville reach Clarksville and Nashville. The
197 general freight agent of the Louisville & Nashville Railroad asserted that "we have no stronger competition, if as strong, as the Nashville & Chattanooga Railway," but it is a fact that for many years the Louisville & Nashville Railroad has owned the majority of the stock of the Nashville, Chattanooga & St. Louis Railway. According to the report made by the Louisville & Nashville Railroad to the Commission for the year 1911, the stock so owned amounted to 71 per cent. In Chamber of Commerce of Chattanooga v. S. Ry. Co., supra, the Commission said:

The Louisville & Nashville road, by virtue of its ownership of a

majority of the stock of the Nashville, Chattanooga & St. Louis Railway, can name the entire board of directors and has the power to control the operations of the latter road. If competition of the Nashville, Chattanooga & St. Louis Railroad Company on traffic from the east to Nashville should for any reason become objectionable to the Louisville & Nashville road, it possesses the power to control or put an end to that competition.

In discussing this phase of the same case, in Interstate Commerce Commission v. E. T., V. & G. Ry. Co., 85 Fed. 116, the Federal court for the Eastern District of Tennessee said:

But it appears that that company (L. & N. R. R.) owns and controls a majority of the stock of the Nashville, Chattanooga & St. Louis Railroad Company, the respondent carrier, which constitutes that part of the through lines which extends from Chattanooga to Nashville and fixes the rates for that road. It is therefore in a position to insure to Nashville such concessions as to advance its favoring purpose with reference to that city. It really has no competition there unless it be from the navigation of the Cumberland River.

And Judge Taft, when on the Circuit Court of Appeals, said, in referring to the same matter, 99 Fed. 63:

We know that it is stipulated in the record that the officers of the Nashville, Chattanooga & St. Louis Railroad Company would testify that it competes with the Louisville & Nashville Railroad Company, and that they are under different managements; but such evidence must be weighed in the light of the history of railroads in this country and the motives that ordinarily govern in railroad management. One railroad company acquires the controlling interest in another company to control its general policy, and while it may permit independence in the personnel and the details of management, it needs more than a stipulated statement of this general nature to induce a belief that the company which elects the directors of the other will permit that other to take a course materially detrimental to the interests of the owning company.

We are convinced from our consideration of the facts developed in connection with defendants' claim of railroad competition at Nashville and Clarksville that this competition is not of such force and effect as to justify a lower scale of rates at these points than at Bowling Green on traffic the movement of which is through Bowling Green.

198 The defendants lay much stress on the fact that Nashville is a commercial center of importance and that the volume of trade there far surpasses that of Bowling Green. It is conceded that this is not due to the influence of the railroads, as Nashville was a receiving and distributing point for traffic when the rail carriers reached it. But the fact that it is recognized as a trade center does not warrant the continuance of a relation of rates between that point and Bowling Green which result in undue preference to the one and undue prejudice to the other. The law contemplates relatively fair rates as between different points, and one of its prime objects is to cure the practice of carriers, formerly so prevalent, of

favoring one point over another when the favored point possesses no advantages over the other with respect to real competition either by water or rail.

Having given due consideration to all the facts of record in this proceeding, we are of the opinion that the defendants' rates to and from Bowling Green, Ky., are unjustly discriminatory in and to the extent that they exceed the rates contemporaneously maintained as applicable through Bowling Green to and from Nashville, Tenn., and that for the future the defendants should not be relieved from the operation of the fourth section of the act with regard to the rates to and from these points.

The complainant, in its brief, urges the establishment of class rates to Bowling Green that will be the average of the class rates to Louisville and to Nashville. This would provide rates ranging from 3 to 8 cents lower than at Nashville, but there is nothing in the record to show that the Nashville basis would be unreasonable as applied at Bowling Green.

We shall refrain from any discussion of the rates from Chicago and the west, referred to in the complaint, in view of the following statements in complainant's brief:

The rates from Chicago and the west to points in southeastern territory are made with relation to the rates from the east and, therefore, we think it is sufficient to establish our case with reference to the rates from New York to Bowling Green and allow the rates from Chicago and St. Louis to Bowling Green to be adjusted in relation thereto just as is done at various other southern points.

The rate of 17 cents per hundred pounds on sugar from New Orleans, La., to Louisville, which complainant seeks to have applied to Bowling Green, affords a revenue per ton-mile of slightly under 4.2 mills for a haul of 811 miles. The present rate to Bowling Green is 20 cents. It is the contention of defendant Louisville & Nashville Railroad that these rates are low and were established for the specific purpose of meeting competition by water from New Orleans. It is undoubtedly true that in the past actual water competition influenced these rates. In Payne-Gardner Co. v. L. & N. R. R. Co., 13 I. C. C. 638, decided June 8, 1908, the Commission stated that the competition of steamboats operating on the Ohio and Mississippi rivers has affected the Louisville rate on sugar from New Orleans, although there has been no movement of sugar by water to Louisville in recent years. The brief for complainant, on page 18, says:

199 The rate upon sugar from New Orleans to Bowling Green a few years ago was 35 cents, said rate being reduced to 30 cents, then to 25 cents, and then to 20 cents, where it has remained. As testified by Mr. H. D. Graham and admitted by Mr. Goodwyn, this result was brought about because sugar was shipped to Evansville from both New Orleans and the east by rail, and then brought by boats in carload lots from Evansville to Bowling Green.

We believe from the facts before us that the water competition of the Ohio and Mississippi rivers is reflected in the present rate of 17 cents to Louisville and that the rate of 20 cents to Bowling

Green does not bear an unreasonable relation to the Louisville rate. Under the circumstances the defendants will be relieved from the operation of the fourth section of the act so far as this traffic from New Orleans to these points is concerned.

The complainant alleges that to withhold from Bowling Green at this time the benefit of rates to the south, southeast and southwest, adjusted in relation to the rates from Louisville and Nashville, is unduly prejudicial to Bowling Green. The present rates from Bowling Green to Montgomery, Ala., are as follows:

Class...	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate .	102	85	66	61	56	52	46	49	30	24	52	47	60

From Nashville the rates are:

Rate...	63	57	53	40	32	28	20	26	19	15	29	25	30

And from Clarksville:

Rate...	76	70	66	48	40	34	26	32	25	21	37	33	41

It is contended that since the distance from Clarksville to Nashville is 64 miles and from Bowling Green to Nashville, 72 miles, it would seem that Bowling Green is at least entitled in this adjustment of rates to Montgomery to the same rates as Clarksville. In its brief, complainants say:

Jackson, Miss., Atlanta, Ga., and other points in the southeast should, of course, bear some relation to the rates to Montgomery. If the rates be adjusted from Bowling Green to Montgomery, as suggested, they would *consist* with rates from Clarksville, which the railroad has voluntarily established, and such reductions as may be accorded Bowling Green in its inbound rates will thereby be made of real use and availibility.

At the hearing the general freight agent of the Louisville & Nashville Railroad Company stated that if there were any need of outbound rates on commodities produced or manufactured at Bowling Green, his company would put in such rates not higher than Louisville rates. No comparison is given of the commodity rates to Montgomery from Louisville and from Clarksville, but the following table of class rates from Louisville shows a basis considerably higher than from Clarksville:

200

Class...	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate...	98	87	78	62	50	41	28	34	26	22	44	39	44

Despite this defendant's willingness to give Bowling Green commodity rates not higher than Louisville rates, it argues that—

The reasons for the lower rates from Louisville, Evansville and Nashville to this territory are to be found in the fact that there exists from Louisville, Evansville and Nashville, competition either by water, on the one hand, or between carriers and markets, on the other, which does not exist at Bowling Green.

It does not argue, however, that these reasons exist to Clarksville, nor does it show that there is any dissimilarity of circumstances and conditions surrounding the transportation to Montgomery from Clerksville and Bowling Green. Traffic moving via the Louisville & Nashville Railroad from Clarksville and Bowling Green to Montgomery passes through Nashville, the distance from Bowling Green being 8 miles greater than from Clarksville. The movement from Bowling Green to Nashville is over the main line of the Louisville & Nashville Railroad, while from Clarksville to Nashville the movement is over branch lines via Guthrie and Anqui. There is no competing rail route either from Clarksville or Bowling Green. The rates from Clarksville to Montgomery are fixed with relation to the rates from Nashville, and no reason has been advanced that justifies defendant's failure to adopt the same course with respect to the rates from Bowling Green.

We are of the opinion and find that defendant's rates to Montgomery, Ala., from Bowling Green, Ky., as compared with its rates to Montgomery from Clarksville, Tenn., are unjustly discriminatory and subject the locality of Bowling Green to undue and unreasonable prejudice and disadvantage; and that for the future the rates from Bowling Green to Montgomery should not exceed the rates contemporaneously maintained from Clarksville to Montgomery.

On oranges to Bowling Green from Jacksonville, Fla., complainant seeks a rate not higher than the rate to Louisville, and attacks the present rate to Bowling Green as being unreasonable and unjust. Following is a statement of the rates in cents per standard crate of 80 pounds (minimum on carloads 300 standard boxes or crates):

To	From Jacksonvilla, Fla. (proper).		From Jacksonville, Fla. (when from beyond).	
	C. L.	L. C. L.	C. L.	L. C. L.
Louisville, Ky.....	49	73	46	70
Nashville, Tenn.....	45	63	42	60

The rates to Bowling Green are made by adding to the Nashville rate differentials of 19 cents in carloads and 24 cents in less than carloads.

This results in rates to Bowling Green per crate that exceed the Louisville rates by 15 cents in carloads, and 14 cents in less than carloads. The defendants assert that the conditions existing at Louisville, from a competitive standpoint, are not the same as
201 those existing at Bowling Green, but they only specifically refer to competition at Louisville with the California and imported oranges.

It is true that there is no rail competition in the transportation of oranges to Bowling Green, while between Jacksonville and Louis-

ville the lines of the Southern Railway form a through competing route via the Louisville & Nashville Railroad and connections. This competing route, however, is only 4 per cent shorter than the route through Bowling Green, a difference which is negligible in a haul of such length. The rates on the short line do not accord with the provisions of the fourth section. The longer route is neither markedly circuitous nor is it placed at a decided disadvantage as compared with its competitor. We are of the opinion therefore that the defendants are not entitled to apply at Bowling Green a rate on oranges from Jacksonville that is in excess of the rate contemporaneously maintained on the same commodity from Jacksonville to Louisville.

The evidence respecting complainant's request for a double-deck car rate on hogs from Bowling Green to Chicago is not sufficient to enable the Commission to reach a conclusion in the matter. This item in the present complaint cannot be disposed of without going into the larger question of the use of double-deck cars as such. Complainant also asked for the elimination of a charge of $2.00 per car which it alleged was added to the rate on cattle and hogs from Bowling Green to Chicago, but not to the rate from Nashville. The general freight agent of the Louisville & Nashville Railroad testified that there is no additional charge, and the answer of the defendant explains the inaccuracy of the allegation.

Orders will be issued in accordance with the conclusions herein expressed.

202 *Orders.*

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 4th Day of June, A. D. 1912.

No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, WESTERN & ATLANTIC RAILROAD, EVANSVILLE & TERRE HAUTE RAILROAD COMPANY, CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, NORFOLK & WESTERN RAILWAY COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, MICHIGAN CENTRAL RAILROAD COMPANY, THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY, PENNSYLVANIA COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY, CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY, RAPID RAILROAD COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, MAINE CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, WEST SHORE RAILROAD COMPANY, THE CHESAPEAKE & OHIO RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY, THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, BOSTON & ALBANY RAILROAD COMPANY, BOSTON & MAINE RAILROAD, THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY, PERE MARQUETTE RAILROAD COMPANY, PHILADELPHIA & READING RAILWAY COMPANY, THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, LEHIGH VALLEY RAILROAD COMPANY, THE WABASH RAILROAD COMPANY, OLD DOMINION STEAMSHIP COMPANY, MERCHANTS & MINERS TRANSPORTATION COMPANY, AND THE MAIN STEAMSHIP COMPANY.

Fourth Section Application No. 1952.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the above-named defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving any higher rates for the transportation of traffic from New York, N. Y., and related points,

to Bowling Green, Ky., than those contemporaneously main-
203 tained over their lines on the same traffic from the same points of origin to Nashville, Tenn., when such traffic passes through said Bowling Green.

It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter to maintain and apply to the transportation of traffic from New York, N. Y., and related points, to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the same traffic from the same points of origin to Nashville, Tenn., when such traffic passes through said Bowling Green.

It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain from charging, demanding, collecting, or receiving any higher rates for the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., than those contemporaneously maintained over their lines on the same commodity from said Jacksonville to Louisville, Ky.

It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter to maintain, and apply to the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the same commodity from said Jacksonville to Louisville, Ky.

It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving, any higher rates for the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala., than those contemporaneously maintained over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala.

And it is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter maintain, and apply to the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala., rates which shall not exceed those contemporaneously maintained over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala.

204 *Fourth Section Order No.* 1361.

In the Matter of that Portion of Application, No. 1952, of the Louisville & Nashville Railroad Company, by A. R. Smith, Its Third Vice President, for Itself and on Behalf of Its Connections, for Relief from the Provisions of the Fourth Section of the Act to Regulate Commerce, as Amended June 18, 1910, Respecting Class and Commodity Rates.

Class and Commodity Rates.

This application, No. 1952, filed December 17, 1910, asks, among other things, for authority to continue to charge lower rates to and from Louisville, Ky., Clarksville, and Nashville, Tenn., than are concurrently in effect on like traffic to and from Bowling Green, Ky. A hearing having been held upon this application, in so far as it relates to rates on freight traffic to and from the points hereinbefore de-cribed, and full investigation of the matters and things involved therein having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is herein referred to and made a part thereof:

It is ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby, denied, effective September 1, 1912.

It is further ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective September 1, 1912.

And it is further ordered, That the petitioners herein be, and they are hereby, authorized to continue to charge lower rates on sugar from New Orleans, La., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic at Bowling Green, provided that the present rates to Bowling Green are not exceeded.

The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any other provision of the act.

By the Commission.

[SEAL.] JOHN H. MARBLE, *Secretary.*

205 EXHIBIT F.

Before the Interstate Commerce Commission.

I. C. C. Docket No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,
versus
LOUISVILLE & NASHVILLE RAILROAD COMPANY et al.

Fourth Section Application No. 1952.

Petition for Rehearing in Behalf of Defendant, Louisville & Nashville Railroad Company.

To the Honorable The Interstate Commerce Commission:

Now comes the Louisville & Nashville Railroad Company, one of the defendants, and, by its attorney, W. A. Colston, petitions this Honorable Commission to grant to it a rehearing in the above entitled causes, and states the ground upon which this application is based as follows, to-wit:

I.

Petitioner shows that in Opinion No. 1940 handed down by this Honorable Commission (Syllabus 2, and report pp. 235-237) the Commission finds that the facts of record reveal a community of interest between the water and rail carriers serving Bowling Green, the effect of which is to deprive it of the benefit of water competition which it should enjoy under normal and natural conditions; and, in substantiation of complainant's allegation and of the finding of the Commission in this regard, the Commission cites the following facts as shown of record, to-wit:

(*a*) That the president of the packet company was also division general freight agent of the Louisville & Nashville Railroad Company at Evansville, and still holds both positions:

(*b*) That a former steamboat captain, who had been employed for two years as agent of the packet company at Bowling Green, had received during his service instructions not to solicit freight against the railroad other than that to and from Evansville, by which he meant (Bewley deposition, pp. 9 and 10) that he was not to solicit business coming from beyond Evansville or destined beyond Evansville;

(*c*) That when the Steamer Sun was placed in the Green and Barren rivers in 1901 by the merchants of Bowling Green, both the railroad company and the packet company cut rates;

(*d*) That as a matter of pure hearsay, or report of conversation of one not shown to have any information on the subject testified to, a wholesale merchant at Bowling Green testified that he was in-

formed by a stockholder of the packet company shortly after
206 the Sun ceased operations that the railroad company did not own the packet company, but it guaranteed the packet company against loss in making the fight on the Sun;

(*c*) That after conference on January 30, 1907, with a committee representing the Bowling Green Business Men's Association, the General Freight Agent of the Louisville & Nashville Railroad Company, without any consultation with the president or other representatives of the packet company reduced the rates on certain commodities from the Ohio River at St. Louis to Bowling Green and notified the president of the packet company of the action taken in that regard.

Petitioner respectfully insists that the facts cited by the Commission in its report do not support the conclusion reached by the Commission (report, p. 237), that the Louisville & Nashville Railroad Company has had and still retains a dominating influence over the packet company with respect to the making of rates on traffic in which the rail carrier may be interested. And petitioner further insists that even if there were a community of interest between the water and the rail carriers at Bowling Green there are no facts of record in these cases, and there are no facts at all, to support the conclusion of this Honorable Commission that the effect of such a community of interest is to deprive Bowling Green of the benefit of water competition which it should enjoy under normal and natural conditions. And petitioner further insists that the idea of water competition at Bowling Green other than that which may now exist, and other than that which has been fully met by the railroad company, is entirely conjectural, and that the uncontradicted facts of record in these cases show that no such competition ever did or ever could exist.

The facts that the president of the packet company is division general freight agent of the Louisville & Nashville Railroad Compnay at Evansville is entirely undisputed, but it is insisted that this Honorable Commission exceeds its power under the Act to Regulate Commerce when it holds such fact as affecting the circumstances and conditions of the traffic under investigation. And it is further insisted that there is nothing in this fact to support the conclusion reached by the Commission. It appears clearly from the record and from the tariffs on file with this Honorable Commission that competition at Bowling Green between the rail and water carriers is just as great as it is at the crossings of other railroads and the Green and Barren river line of transportation. The fact that the president of the packet company is also division general freight agent of the Louisville & Nashville Railroad Company does not explain the absence of further water competition with the Louisville & Nashville Railroad Company at Bowling Green any more than it explains the absence of water competition with the Illinois Central Railroad at Rockport, Ky., where that line of railroad crosses the Green River.

Captain Bewley's testimony (deposition, pp. 9 and 10) that he had received instructions not to solicit freight against the railroad

for points beyond Evansville is undisputed, but Captain Bew-
207 ley testified on cross-examination (deposition, p. 22) that neither Captain Howell nor any of the superior officers of the Evansville & Bowling Green Packet Company stated any reasons for the instructions as to soliciting freight for Louisville and other points, or for points other than Evansville; and a very clear reason why such instructions should be given appears from Captain Bewley's further testimony (depo-tion, p. 31) that in 1872 boats stopped running through from Louisville to Bowling Green because "the rates were reduced by rail and it would not pay them to make the trip to Louisville by such small boats as Green River boats are." This Honorable Commission evidently overlooked the fact that Bowling Green business to and from Evansville is just as competitive between the rail and water lines as is business between Bowling Green, Ky., and Louisville, Ky., or business between Bowling Green, Ky., and other points beyond Evansville, and Evansville is the terminus of the Green and Barren river line of transportation.

The fact that when the Steamer Sun was placed in the Green and Barren rivers in 1901, by the merchants of Bowling Green both the railroad company and the packet company cut rates, is entirely undisputed, but that fact does not sustain the conclusion reached by the Commission, and it is respectfully insisted that this Honorable Commission is without authority to consider such facts as affecting the circumstances and conditions of the traffic under investigation. According to the testimony of Captain Bewley for the complainant (deposition, p. 40), the interest of the packet company in traffic other than that of Bowling Green is nine or ten times as great as its interest in the Bowling Green traffic, and its reasons for driving out a competing line on account of traffic controlled exclusively by it are obviously nine or ten times as potent as any reasons for driving out a boat line competing for the Bowling Green traffic. But, as was indicated in petitioner's brief, if we assume that the Louisville & Nashville Railroad Company did actually pay the Evansville & Bowling Green Packet Company to drive the Sun out of the river; if, in fact, we supposed that to be true which has been shown not to be true, that the Louisville & Nashville Railroad Company then owned and controlled the packet company and itself cut the rates—the Commission erred as a matter of law in holding that that fact in any wise affected the circumstances and conditions of the traffic under consideration. The fourth section of the Act to Regulate Commerce as amended June 18, 1910, provides that whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless, after hearing by the Interstate Commerce Commission, it shall be found that such proposed increase rests upon rate conditions other than the elimination of water competition. That provision, if constitutional, absolutely prevents the conclusion that the Louisville & Nashville Railroad Company exercises any present control over the traffic of the Green and Barren rivers by the pos-

sibility of cutting its interstate rates. And this Honorable
208 Commission can not give retroactive effect to the provisions of the Act passed on June 18, 1910.

Even if, for the sake of argument, we accept as undisputed the rank hearsay testified to with respect to supposed guaranty to the packet company by the railroad company against loss in making the fight on the Sun in 1901, it is clearly shown by the testimony of complainant's own witness in this regard (Tr., p. 327) that the alleged conversation had reference merely to the fight which had been made against the Sun and did not have any reference to a continuing agreement or guaranty. Even if it were accepted as undisputed that the railroad company paid sums of money to drive the Sun out of the river in 1901, the Commission erred as a matter of law in considering that fact as affecting the circumstances and conditions of the traffic under investigation in this case.

This Honorable Commission clearly erred in holding (report, p. 236) that the letter addressed by Mr. D. M. Goodwyn to Capt. Lee Howell under date of January 31, 1907, has a direct bearing upon the claim that the Louisville & Nashville Railroad Company influences the rates of the packet company. The letter is just such a communication as this Honorable Commission knows would be addressed by a representative of any competing line to other lines, rail or water, at any common point affected by rate reductions. The letter does not, in word or syllable, afford any ground for the inference that the Louisville & Nashville Railroad Company influences the rates of the packet line. On the contrary, with respect to syrup and molasses, in connection with which advantage had evidently been taken by shippers of a classification conflict, the General Freight Agent of the Louisville & Nashville Railroad Company, after drawing attention to the apparent misclassification, indulged in by shippers, disclaimed even a suggestion of better policing of the traffic for the future, and without conference with the boat line reduced rates to a basis which would prevent classification juggling by shippers. With respect to woven wire fencing, the General Freight Agent of the Louisville & Nashville Railroad Company, without conference with the boat line, reduced the rate and stated the reasons which actuated him in so doing. And with respect to vinegar, C. L., the General Freight Agent of the Louisville & Nashville Railroad Company also drew attention to a lack of definiteness in the classification and again reduced the rate without conference with the boat line in order to prevent classification juggling. Combinations in restraint of trade are prohibited, and competing carriers may not make binding agreements as to maintenance of rates. But discussions between competing lines as to rate adjustments are taking place every day in the year, and this Honorable Commission knows that the railroad business of the country is conducted upon this basis. The Commission erred as a matter of law in considering the facts brought out by the letters referred to in its report as in any way affecting the circumstances and conditions of the traffic under investigation in this case.

The petitioner further states that there are many facts of record

which are not cited by this Honorable Commission, and
209 which were evidently not considered by it in arriving at its conclusion above referred to, which facts, if considered by this Honorable Commission, would have prevented the reasonable possibility of such findings as were made in the Commission's report. For example, it is affirmatively shown by the record that the only effect which the transportation in the Green and Barren rivers has ever had upon the rates at Bowling Green relates to the period subsequent to 1893, when the Louisville & Nashville Railroad Company is alleged to have obtained control of the river (see pp. 98-100 of defendant's brief). And whatever force there might otherwise have been in the inference to be drawn from the fact that Capt. Lee Howell, who is Division General Freight Agent of the Louisville & Nashville Railroad Company at Evansville, is also a stockholder and President of the Evansville & Bowling Green Packet Company, is directly met and overcome by the facts testified to by Mr. Goodwyn (Tr., pp. 463-465): that the Louisville & Nashville Railroad Company owns no part of the Evansville & Bowling Green Packet Company, and that the Louisville & Nashville Railroad Company had nothing whatever to do with the making of the rates from Evansville to Bowling Green, which rates were agreed to by the Evansville & Bowling Green Packet Company and the representatives of the citizens of Bowling Green; and that the Louisville & Nashville Railroad Company fixed its differentials over the Evansville rate without any conference with any representatives of the packet company.

And it is shown without contradiction in the record that the rates of the Louisville & Nashville Railroad Company are adjusted with relation to the rates of the Evansville & Bowling Green Packet Company, which rates are the reduced rates of the Steamer Sun put in effect by the packet company in 1901 under agreement with certain representatives of the citizens of Bowling Green.

The conclusion reached by the Commission in its report in this regard necessarily involves casting aside the only evidence which was given by any witness who had knowledge of the facts.

II.

Petitioner further shows that this Honorable Commission erred in finding (Syllabus 2, and report, p. 238) that if it were not for the affiliation between the rail carrier and the water carrier at Bowling Green there would not be sufficient actual dissimilarity between the circumstances and conditions surrounding the transportation by water to and from Bowling Green, Nashville, and Clarksville, to justify relieving the Louisville & Nashville Railroad Company from the operation at Bowling Green of the Long and Short Haul Clause of the Act to Regulate Commerce. And petitioner further shows that there are no facts to sustain the finding of the Commission (report, p. 234) that the potential competition on the Green and Barren rivers is as great as on the Cumberland River.

The Commission finds (report, p. 234) that there is no doubt that

the water competition of the Cumberland River has a controlling influence on the Nashville and Clarksville rates, and, therefore, the conclusion of the Commission above referred to, and the orders of the Commission in these cases, are in effect a finding that the water competition in the Green and Barren rivers must have a controlling influence on the Bowling Green rates, and an order that the Louisville & Nashville Railroad Company reduce its rates to and from Bowling Green on account of such conjectural water competition. In this the Commission erred as a matter of law because this Honorable Commission can not compel a carrier to meet competition which the carrier does not believe to exist, but which the Commission holds ought to exist.

210

And the Commission also inferred as a fact potential competition in the Green and Barren rivers, a conclusion which can not reasonably be reached from the facts of record in these cases.

For brevity, reference is made to pages 24 and 49, inclusive, of brief for defendants in I. C. C. Docket No. 4310, wherein an abstract is made of the evidence relating to the competitive effect of the Green and Barren rivers at Bowling Green, Ky., as compared with the competitive effect of the Cumberland River at Nashville and Clarksville, Tenn. As shown by the facts of record in these cases, and as shown by complainant's own statement of navigation on the Green and Barren rivers, the competitive effect of water competition in the Green and Barren rivers on rates of transportation to and from Bowling Green has never been substantial, material or controlling. If the order of this Honorable Commission in this regard were put into effect it would establish by fiat that which does not exist and which never existed in substance or in fact.

III.

This Honorable Commission erred in finding (Syllabus 3, and report, p. 239) that the railroad competition at Nashville (erroneously shown "Louisville" in Syllabus) and Clarksville is not of such force and effect as to justify a lower scale of rates at these points than at Bowling Green on traffic the movement of which is through Bowling Green. This is an inference of fact not supported by any statement in the record. This Honorable Commission errs as a matter of law when it finds regardless of uncontradicted testimony to the contrary, that by reason of its ownership of a majority of the stock of the Nashville, Chattanooga & St. Louis Railway, the Louisville & Nashville Railroad Company is estopped to assert the existence of railroad competition at Nashville; and it ignores entirely in such a finding the existence of the Tennessee Central Railroad, which is not in any way controlled by the Louisville & Nashville Railroad Company.

This inference of fact, made without foundation in the record, is in conflict with the only direct testimony in that regard which appears. Mr. D. M. Goodwyn, General Freight Agent of the Louisville & Nashville Railroad Company, testified, as is shown on page 238 of the Commission's report, that the Louisville & Nashville Railroad

Company has no stronger competitor than the Nashville & Chattanooga Railway. And Mr. E. K. Bryan, Jr., Assistant General Freight Agent of the Illinois Central, testified (record of hearing at Bowling Green April 29, 1912, pp. 63 and 64) that the Illinois Central in connection with the Nashville, Chattanooga & St. Louis Railway, competes with the Louisville & Nashville Railroad for business into and out of Nashville, Tenn.; and that the Illinois Central, in connection with the Tennessee Central Railroad, competes for business into and out of Nashville and Clarksville, Tenn.; and Examiner Gaddess stated at the hearing (Tr., p. 64) that he did not think there could be any question about that fact. And Mr. Fulton testified (Tr., p. 310 in I. C. C. Docket No. 4310) that the competition at Nashville and Clarksville is "north, south, east, and west, criss-cross, and every way you can make it."

211

The finding of the Commission involves casting aside the only direct evidence had in this regard.

IV.

This Honorable Commission clearly erred, to the prejudice of this petitioner, in its understanding of the reasons for which comparisons were made between the commercial importance of Nashville, Tenn., and the commercial importance of Bowling Green, Ky.

The Commission says (report p. 239):

"The defendants lay much stress on the fact that Nashville is a commercial center of importance and that the volume of trade there far surpasses that of Bowling Green. It is conceded that this is not due to the influence of the railroads, as Nashville was a receiving and distributing point for traffic when the rail carriers reached it. But the fact that it is recognized as a trade center does not warrant the continuance of a relation of rates between that point and Bowling Green which results in undue preference to the one and undue prejudice to the other. The law contemplates relatively fair rates as between different points, and one of its prime objects is to cure the practice of carriers, formerly so prevalent, of favoring one point over another when the favored point possesses no advantages over the other with respect to real competition either by water or rail."

Defendants have never argued that the fact that Nashville was and is recognized as a trade center warrants the continuation of any relation of rates between that point and Bowling Green. What defendants did and do argue in this regard is that complainant's claims as to the natural advantages of Bowling Green in the matter of river transportation are not borne out by the history of transportation on the Green and Barren rivers; that the indisputable facts are that Nashville and Clarksville, as a result of their geographical location, were important distributing points before the railroads were built, and that the transportation afforded by the Green and Barren rivers was and has been at no time sufficient or substantial enough to affect the rates at Bowling Green as river transportation affected the rates at Nashville and at Clarksville; that the railroads, when they reached Nashville and Clarksville, simply

met the conditions which they found at those points, that those conditions have never existed and have never had to be met to as great an extent at Bowling Green, that there must be other circum-
212 stances besides mere navigability to create water competition at any point; that, to use the illustration adopted in brief for defendants (p. 18), a canal through the Desert of Sahara to an oasis of one thousand inhabitants would probably not develop enough traffic to justify the running of a line of boats or barges on that canal, and that if in such cases, a railroad also reached the oasis it could not be contended that the mere location of that oasis upon navigable water necessitated or justified competitive rates on the part of the railroad.

Petitioner insists that the mere fact of location on navigable water does not create such similarity of conditions as will justify complainant in demanding that defendants meet the water competition which complainant claims but defendants do not believe to exist. In support of the fact that the geographical location and other advantages of Nashville and Clarksville not possessed by Bowling Green effect water competition at Nashville and Clarksville, while water competition was absent at Bowling Green, the history of the three places was given, which history clearly shows that effective trade by water did exist at Nashville and at Clarksville and did not exist at Bowling Green, Ky., and that the railroads were compelled to meet water competition at Nashville and at Clarksville and have never been compelled to meet water competition at Bowling Green, Ky.

V.

This Honorable Commission erred in finding that the rates to and from Bowling Green, Ky., are unjustly discriminatory in and to the extent that they exceed the rates contemporaneously maintained as applicable through Bowling Green to and from Nashville, Tenn., and that for the future defendants should not be relieved from the operation of the fourth section of the act with regard to the rates to and from those points. As was shown in the testimony of Mr. D. M. Goodwyn (Tr., pp. 343-359, I. C. C. Docket No. 4310), when the Louisville & Nashville Railroad Company was first completed between Louisville and Nashville in 1859 its first line of rates between Louisville and Nashville was established on a scale beginning at 70 cents first class. In those days the freight rates of the Louisville & Nashville Railroad were made by the Board of Directors. The Superintendent of the road filed a petition with the Board of Directors concerning the Nashville rates, and said that the rates would not handle any business and asked that he be granted authority to reduce the rates and put them in line with the competition which actually existed at that point, and that this was the first instance known in the history of the Louisville & Nashville Railroad Company where water competition was met; that the annual report of the President and Directors of the Louisville & Nashville Railroad Company for the fiscal year ending June 30, 1868, contains a report of Mr. Albert Fink, General Superintendent, in which

the question of competition is taken up at some length; that Mr. Fink mentions the competitive conditions at Clarksville, Tenn., and at Nashville, Tenn., but that no mention whatever is made of competition at Bowling Green, Ky.

213 It has been shown without contradiction in the record (vide pp. 90-93 of brief for defendants, I. C. C. Docket No. 4310) that the rates to and from Bowling Green are reasonable in and of themselves, and this Honorable Commission has found in these cases (report, p. 234) that the water competition of the Cumberland River has a controlling influence on the Nashville and Clarksville rates, and the finding of the Commission above stated, and the orders of the Commission based thereon, have the effect of requiring that petitioner shall reduce its reasonable rates to and from Bowling Green, Ky., because of some speculative or theoretical competition which it is claimed might exist at Bowling Green, Ky., but which has never existed in fact, and which does not exist in fact at this time.

VI.

This Honorable Commission erred in holding (Syllabus 7, report, pp. 241-242) that there is no competing rail route either from Clarksville or from Bowling Green, and that defendants' rates to Montgomery, Ala., from Bowling Green, Ky., as compared with its rates to Montgomery from Clarksville, Tenn., are unjustly discriminatory, and that for the future the rates from Bowling Green to Montgomery should not exceed the rates contemporaneously maintained from Clarksville to Montgomery.

There is a competing rail route, the Tennessee Central, from Clarksville. There is no competing rail route from Bowling Green. The rates from Clarksville to Montgomery as compared with the rates from Bowling Green to Montgomery were not in issue, and no investigation was had and no hearing afforded as to the rates from Clarksville to Montgomery compared with the rates from Bowling Green to Montgomery. The only rates to Montgomery complained of are those from Nashville, Evansville, and Louisville, as set forth in Paragraph XV of complainant's petition. The order of this Honorable Commission requiring that petitioner be notified and required to cease and desist on or before the first day of September, 1912, and for a period of two years thereafter, to abstain from charging, demanding, collecting, or receiving any higher rates for the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala., than those contemporaneously maintained over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala., is an order made without the full hearing provided for by the Act to Regulate Commerce, and if enforced would deprive petitioner of its property without due process of law; and it is respectfully insisted that the orders of this Honorable Commission are unconstitutional and void on that account.

VII.

This Honorable Commission erred as a matter of law in holding (Syllabus 2, report pp. 237-238), even if there were a community

of interest betwe-n the rail line and the water line at Bowling Green, that such community of interest estops the Louisville & Nashville Railroad Company from justifying discrimination against
214 Bowling Green on account of differences in circumstances and conditions surrounding the traffic at Bowling Green and the circumstances and conditions surrounding the traffic at Nashville and at Clarksville.

While the Supreme Court, in the case of Interstate Commerce Commission v. Louisville & Nashville Railroad Company, 190 U. S. 273, 283, did say as obiter dicta that if by agreements or combinations among carriers it were found that at a particular point rates were unduly influenced by a suppression of competition, the fact would be proper to consider in determining the question of undue discrimination and the reasonableness per se of the rates at such possible competitive points, the ratio decidendi of the entire case is directly in conflict with the Commission's conclusion of law in this respect. In that case Mr. Justice White said (pp. 282-283):

"In the report of the Commission a suggestion is found that La Grange should be entitled to the same rate as Atlanta, because if the carriers concerned in this case, in connection with other carriers reaching La Grange, chose to do so they might bring about competition by way of a line between Macon and La Grange, which would be equivalent to the competitive conditions existing at Atlanta. We are unable, however, to follow the suggestion. To adopt it would amount to this: that the substantial dissimilarity of circumstances and conditions provided by the Act to Regulate Commerce would depend, not, as has been repeatedly held, upon a real and substantial competition at a particular point affecting rates, but upon the mere possibility of the arising of such competition. This would destroy the whole effect of the Act and cause every case where competition was involved to depend not upon the fact of its existence as affecting rates, but upon the possibility of its arising. What the Fourth Section of the Act to Regulate Commerce has reference to is an actual dissimilarity of circumstances and conditions, not a conjectural one."

It clearly appears from the record that the rates of the packet company are the result, not of any coercion or other action of the Louisville & Nashville Railroad Company, but of an agreement between the packet company and the citizens of Bowling Green, and those rates are substantially the rates put in effect by the Steamer Sun, operated by the citizens of Bowling themselves. The idea of estoppel is without support either in fact or in law.

VIII.

This Honorable Commission erred as a matter of law in holding (Report, p. 242) that the competition with the Southern Railway with respect to traffic between Jacksonville and Louisville does not create a difference of circumstances and conditions surrounding the traffic at Louisville and at Bowling Green, because the competing route is only four per cent shorter than the route through Bowling Green.

In the case of Interstate Commerce Commission v. Louisville & Nashville Railroad, supra, the connecting roads of the appellees formed in fact the short line, 496 miles in length, between New Orleans and Atlanta. But the court held, nevertheless, that
215 competition at Atlanta was sufficient to take the case out of the statute. The question to be determined is not what percentage of difference there may be between the long line and the short line, but as to whether or not there is substantial and controlling competition. The testimony in these two causes clearly shows that competition at Louisville is actual and controlling, and that there is no such competition at Bowling Green. And, as was held by the Supreme Court in the case of Interstate Commerce Commission v. Louisville & Nashville Railroad Company, supra (Syllabus 1), when competition which controls rates prevails at a given point a dissimilarity of circumstances and conditions is created justifying a carrier in charging a lesser rate to such point, being the longer distance, than it exacts to a shorter distance and non-competitive point on the same line.

IX.

And this Honorable Commission erred as a matter of law in its orders respecting the rates to and from Bowling Green, Ky., in that those orders provide for lower rates to and from Bowling Green, Ky., than the reasonable rates which are charged to and from intermediate points, the lower rates to and from the longer distance point, Bowling Green, not being justified by any substantial or controlling competition, or by any other differences in circumstances and conditions of the traffic.

X.

That this Honorable Commission erred as a matter of law in ordering the reasonable rates to and from Bowling Green covered by its orders of June 4, 1912, which have not been found to be unreasonable rates, to be reduced as indicated in said orders; and that said orders of the Commission of June 4, 1912, if enforced, would operate to deprive petitioner of its property without due process of law.

Wherefore, petitioner prays that this Honorable Commission will grant to it a rehearing in these causes and a re-argument thereof, and that pending said rehearing this Honorable Commission will stay and postpone the enforcement of the orders heretofore entered in these causes, and that after rehearing the Commission may reverse, change or modify the said orders according as in law and fact may appear just.

And petitioner further prays that if this Honorable Commission will not grant the rehearing and re-argument herein desired, it will at least, by special order to that effect, stay and postpone the effective date and enforcement of the orders herein complained of in order that petitioner's right in that regard may be tested in a court of competent jurisdiction without the expense and inconvenience which

would necessarily result from a compliance with the orders of this Honorable Commission pending such judicial determination.

Respectfully submitted.

W. A. COLSTON,
Attorney for Defendant Louisville & Nashville Railroad Company.

216 I, W. A. Colston, attorney for defendant, Louisville & Nashville Railroad Company, in the above entitled causes, hereby certify that in my judgment the foregoing petition for rehearing is well taken in law and supported by the record in said causes, and that this petition is not filed for the purpose of delay.

W. A. COLSTON.

217 Supplemental Petition, referred to in the foregoing Præcipe and filed in the United States Commerce Court on November 11th., 1912, is as follows:

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

To the Honorable the Judges of the Commerce Court:

Petitioner, the Louisville & Nashville Railroad Company comes now and by way of supplemental petition to its original petition herein respectfully shows unto the court:

20. That on or about the 7th day of October, 1912, petitioner exhibited its original petition in this Honorable Court against the United States of America.

Stating a certain complaint filed with the Interstate Commerce Commission on or about August 18, 1911, by the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, which had reference to rates for the transportation of freight to and from Bowling Green, Kentucky, as compared with rates to and from Clarksville, Tennessee, Nashville, Tennessee, Louisville, Kentucky, and Evansville, Indiana, from and to New York, Chicago, New Orleans, Jacksonville, St. Louis, and various other points, but which did not involve a comparison of rates from Bowling Green, Kentucky, to Montgomery, Alabama, with rates from Clarksville, Tennessee, to the same destination; and in which complaint it was alleged that certain rates set forth were unjust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce, and that said

218 rates were furthermore unduly prejudicial to the interests of the city of Bowling Green and unduly preferential to the interests of the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky, and that they were in violation of Section 3 of the Act to Regulate Commerce, and that they furthermore constituted in a majority of instances greater charges for the shorter distance to or from Bowling Green, Kentucky, that for the longer distances to or from the cities of Clarksville and Nashville, Tennessee,

and Louisville, Kentucky, such shorter distance being included within the longer distances, and being over the same line and in the same direction, and that said greater charges to or from Bowling Green were in violation of Section 4 of the Act to Regulate Commerce as amended June 18, 1910; and in which complaint it was further alleged that the circumstances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Kentucky, were substantially similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky; and in which complaint it was prayed that relief be granted with respect to the rates and alleged violations of law complained of;

And stating also the answer filed by petitioner herein to said complaint, wherein petitioner herein put in issue the material allegations of the complaint; and in which answer with respect to the allegation concerning the alleged violation of Section 4 of the Act to Regulate Commerce as amended June 18, 1910, petitioner set forth that all of its rates to and from Bowling Green were embraced in the list of tariffs as to which petitioner had filed an application with the Interstate Commerce Commission for relief from the provisions of the fourth section of the Act to Regulate Commerce as amended June 18, 1910, said application being entered upon the records of the Interstate Commerce Commission as No. 1952, and no determination thereof having been made by the Commission; and in which
219 answer petitioner denied that the circumstances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Kentucky, were substantially or at all similar to the circumstances and conditions surrounding the transportation of traffic to and from Clarksville, Tennessee, or Nashville, Tennessee, or Louisville, Kentucky;

And stating also that by Fourth Section Application No. 1952 filed with the Interstate Commerce Commission on December 17, 1910, your petitioner for itself and its connections sought authority inter alia to continue, with respect to traffic to and from Louisville, Kentucky, Evansville, Indiana, Clarksville, Tennessee, and Nashville, Tennessee, to charge less for longer than for shorter distances for the transportation of property over the same line or route in the same direction, the shorter being included within the longer distance;

And stating also a hearing in the proceeding instituted by the aforesaid complaint of the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, which was known as Docket No. 4310 before the Interstate Commerce Commission, and a hearing in connection with that portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company, aforesaid, which seeks authority to continue lower rates on traffic through Louisville, Kentucky, to and from Clarksville and Nashville, Tennessee, than are charged on like traffic to and from intermediate stations between Louisville, Kentucky, Clarksville and Nashville, Tennessee, and also that portion of the same application which seeks authority to continue lower rates on traffic through Nashville

and Clarksville, Tennessee, to and from Louisville, Kentucky, than are concurrently effective on like traffic to and from intermediate stations between Clarksville and Nashville, Tennessee, and Louisville, Kentucky, in which proceedings and hearings the uncontradicted evidence showed, and it is true:

220 (*a*) That the circumstances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Kentucky, were not substantially or at all similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky;

(*b*) That there was a degree of substantial and controlling competition with water carriers at Louisville, Kentucky, and at Nashville and Clarksville, Tennessee, which did not exist at Bowling Green, Kentucky;

(*c*) That there was at Louisville, Kentucky, and at Nashville and Clarksville, Tennessee, substantial and controlling competition of rail carrier with rail carrier, intensified by market competition, and that there was no such competition at Bowling Green, Kentucky;

(*d*) That the rates complained of were reasonable in and of themselves, and that the Louisville, Kentucky, Nashville, Tennessee, and Clarksville, Tennessee, rates were not lower than it was necessary that they should be in order to meet the competition which existed at those points;

(*e*) That the rates to and from Bowling Green met the competition which existed at that point as far as it was necessary so to do.

And stating also a report in writing, together with certain orders in respect thereto, made by the Interstate Commerce Commission with respect to said proceedings and in direct conflict with the uncontroverted facts established therein, in the making of which report and orders the Interstate Commerce Commission acted in a capricious and unreasonable manner, exceeded the authority delegated to it by Congress, and erred as a matter of law, and to the detriment of petitioner, with the consequence that the enforcement of said orders of the Interstate Commerce Commission would result in taking petitioner's property without due process of law, in contravention

221 of the Constitution of the United States, and more particularly in contravention of the Fifth Amendment thereto; and the said orders of the Commission, even if in form within its delegated powers, were the result of so unreasonable an exercise of said powers that they were in substance beyond it in respects which were in the original petition more particularly set forth:

And stating also a petition for rehearing presented by your petitioner on or about August 24, 1912, to the Interstate Commerce Commission in the foregoing matters, and the failure of the Commission to grant said petition for rehearing, and the postponement until October 15, 1912, of the effective date of the orders complained of merely on account of the physical impossibility of correcting by September 1st (the original effective date of the orders) the multitude of tariffs affected by the orders:

And stating also that unless the orders complained of were set

aside and annulled upon final hearing of the suit by this Honorable Court, and unless their operation- were restrained and suspended by this Honorable Court on or before October 15, 1912, and pending the final hearing and determination of the suit, petitioner would, by reason of the enormous penalties provided by the Act of Regulate Commerce for failure to comply with an order of the Interstate Commerce Commission, be compelled to put said orders into effect, and that such action would result in irreparable loss to petitioner by reason of changes in tariffs and bases for construction rates to and from Bowling Green, and thereafter would result in the loss of many thousands of dollars annually to petitioner and subject petitioner to great loss and damage and irreparable injury, for all of which petitioner was without adequate remedy at law;

And praying that the said orders of the Interstate Com-
222 merce Commission might be wholly enjoined, set aside, and annulled, and that a preliminary injunction might be awarded restraining the enforcement thereof, and that such other, further, and full relief might be granted as the case required, and that to this end the United States of America might be made a party defendant to the petition and required to answer its allegations, an answer under oath being expressly waived, etc.

And process of subpœna was duly served upon the United States as respondent, and upon the Interstate Commerce Commission, and service was made by filing a copy of said petition, together with copy of petitioner's exhibit book containing exhibits filed with and prayed to be read as part of the petition, in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice, all as required by law.

And petitioner refers to said original petition in this case and said petitioner's exhibit book filed therewith, and prays that said original petition and said petitioner's exhibit book be read and considered as part hereof, and that this supplemental petition be treated as supplementary to said original petition and as part thereof, and the particulars of said original petition are hereby referred to and incorporated herein.

And petitioner says that the averments in said original petition were and are true.

21. And petitioner further says that since the filing of its original petition herein, and service thereof by filing copies in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice, the Interstate Commerce Commission, to-wit, on the 8th day of October, 1912, issued its order in the aforesaid case of Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, versus Louisville & Nashville
223 Railroad Company, et al., Docket No. 4310, and with reference to aforesaid Fourth Section Application No. 1952, wherein it denied the petition for rehearing, filed on behalf of defendant, Louisville & Nashville Railroad Company, petitioner in this case, which petition for rehearing was and has been previously referred to in the original petition, and in this supplemental petition herein, the substantive part of said order being as follows, to-wit:

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 8th Day of October, A. D. 1912.

No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY et al.

Fourth Section Application No. 1952.

Upon further consideration of the record in the above entitled proceeding and petition for rehearing filed on behalf of defendant, Louisville & Nashville Railroad Company,

It is ordered, That the said petition for rehearing be, and the same is, hereby denied.

It is further ordered, That a copy of this order be served upon each of the parties to this case.

And in the case of Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, versus Louisville & Nashville Railroad Company, et al., which was known as Docket No. 4310 before the Interstate Commerce Commission, as aforesaid, and which was instituted by complaint of the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, hereinabove referred to, the Commission did at the same time issue its order vacating and setting aside the order previously entered on June 4, 1912, in said case, the substantive part of the order of the Commission in this regard being as follows, to-wit:

224

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 8th Day of October, A. D. 1912.

No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY et al.

Upon further consideration of the record in the above entitled case:

It is ordered, That the order heretofore entered on June 4, 1912, in said case, be, and the same is hereby, vacated and set aside.

And the substantive part of the order complained of in the original petition herein, as set forth in paragraph 6 of said original petition, and so vacated and set aside by the Commission, was as follows, to-wit:

It is ordered, That the above-named defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving any higher rates for the transportation of traffic from New York, N. Y., and related points, to Bowling Green, Ky., than those contemporaneously maintained over their lines on the same traffic from the same points of origin to Nashville, Tenn., when such traffic passes through said Bowling Green.

225 It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter to maintain, and apply to the transportation of traffic from New York, N. Y., and related points, to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the same traffic from the same points of origin to Nashville, Tenn., when such traffic passes through said Bowling Green.

It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving any higher rates for the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., than those contemporaneously maintained over their lines on the same commodity from said Jacksonville to Louisville, Ky.

It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter to maintain, and apply to the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the same commodity from said Jacksonville, to Louisville, Ky.

It is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to cease and desist, on or before the 1st day of September, 1912, and for a period of two years thereafter to abstain, from charging, demanding, collecting, or receiving any higher rates for

226 the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala. than those contemporaneously maintained over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala.

And it is further ordered, That said defendants, according as they participate in the traffic, be, and they are hereby, notified and required to establish, on or before the 1st day of September, 1912, and for a period of two years thereafter maintain, and apply to the transportation of traffic from Bowling Green, Ky., to Montgomery, Ala., rates which shall not exceed those contemporaneously maintained

over their lines on the same traffic from Clarksville, Tenn., to Montgomery, Ala.

And in the matter of that portion of Application No. 1952 of the Louisville & Nashville Railroad Company, by A. R. Smith, its Third Vice President, for Itself and on behalf of its Connections, for Relief from the Provisions of the Fourth Section of the Act to Regulate Commerce as Amended June 18, 1910, Respecting Class and Commodity Rates, the Interstate Commerce Commission did at the same time amend its Fourth Section Order No. 1361, which was one of the orders complained of in the original petition herein, and which was combined with the order in the case of Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, versus Louisville & Nashville Railroad Company, et al., Docket No. 4310, aforesaid, and which was based upon and referred to and included the report containing the findings of fact and conclusions of the Commission thereon in the case of Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, versus Louisville & Nashville Railroad Company, et al., Docket No. 4310, as aforesaid, and the sole effect of said amendment was to postpone the effective date of said Fourth Section Order No. 1361 until December 1, 1912, and the substantive part of said order of amendment was as follows, to-wit:

227 At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 8th Day of October, A. D. 1912.

Fourth Section Order No. 1361.

In the Matter of That Portion of Application No. 1952 of the Louisville & Nashville Railroad Company, by A. R. Smith, Its Third Vice-President, for Itself and on Behalf of Its Connections, for Relief from the Provisions of the Fourth Section of the Act to Regulate Commerce, as Amended June 18, 1910, Respecting Class and Commodity Rates.

Class and Commodity Rates.

Upon further consideration of the record in the above entitled case:

It is ordered, That the order heretofore entered on June 4, 1912, in said case be, and the same is, hereby amended to read as follows:

This application, No. 1952, filed December 17, 1910, asks, among other things, for authority to continue to charge lower rates to and from Louisville, Ky., Clarksville, and Nashville, Tenn., than are concurrently in effect on like traffic to and from Bowling Green, Ky. A hearing having been held upon this application, in so far as it relates to rates on freight traffic to and from the points hereinbefore described, and full investigation of the matters and things involved therein having been had, and the Commission having, on the 4th day of June, 1912, made and filed a report containing its findings

of fact and conclusions thereon, which said report is herein referred to and made a part hereof.

It is ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowl-
228 ing Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

It is further ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisvile, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to continue to charge lower rates on sugar from New Orleans, La., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, provided that the present rates to Bowling Green are not exceeded.

The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any other provision of the act.

And the substantive part of the orders complained of in the original petition herein, as set forth in paragraph 6 thereof, which was postponed by said order of amendment, was as follows, to-wit:

It is ordered, That that portion of said application, No. 1952 which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby, denied, effective September 1, 1912.

It is further ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective September 1, 1912.

229 And it is further ordered, That the petitioners herein be, and they are hereby, authorized to continue to charge lower rates on sugar from New Orleans, La., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, provided that the present rates to Bowling Green are not exceeded.

The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation and correction if in conflict with any other provision of the act.

22. And petitioner further says that as it appears from the action taken by the Interstate Commerce Commission in this regard that the Commission was of the opinion that the findings and orders pre-

viously made by it and complained of in the original petition herein were improper, the Commission ought in justice and equity to have granted the petition for rehearing in the said proceedings, which petition for rehearing the Commission has denied, and that since it appears from the Commission's own action that the findings, conclusions, and orders of the Commission made upon the hearings had were erroneous and improper, sufficient reason was made to appear why the rehearing asked should have been granted, and it was an abuse of discretion on the part of the Commission to refuse such rehearing; and the orders made by the Commission on October 8, 1912, as hereinabove set forth, which deny the said petition for rehearing, and which deny in part relief under the Fourth Section of the Act to Regulate Commerce applied for, are orders made without the full hearing and investigation contemplated by the Act to Regulate Commerce, and are unlawful on that account.

23. Petitioner further says that Fourth Section Order No. 1361 of the Interstate Commerce Commission, amended by the
230 Commission on the 8th day of October, A. D. 1912, as hereinabove set forth, in effect requires the performance of all of those acts and things which were required by all of the orders of the Interstate Commerce Commission complained of in the original petition in this case and set forth in paragraph 6 of said original petition, except as to the charging, demanding, collecting, or receiving of higher rates for the transportation of traffic from Bowling Green, Kentucky, to Montgomery, Alabama, than those contemporaneously maintained on the same traffic from Clarksville, Tennessee, to Montgomery, Alabama; and that said Fourth Section Order No. 1361 of the Interstate Commerce Commission, amended by the Commission on the 8th day of October, A. D. 1912, as hereinabove set forth, refers to and includes the entire report and findings of fact and conclusions thereon made and filed by the Commission on the 4th day of June, 1912, which are the report and findings of fact and conclusions thereon complained of in the original petition in this case, and referred to and included in the orders in said original petition complained of; and that said Fourth Section Order No. 1361 of the Interstate Commerce Commission, amended by the Commission on the 8th day of October, 1912, as hereinabove set forth, and the report containing findings of fact and conclusions of the Commission, referred to and made a part of said amended order by the Commission, are subject to all of the objections that are in the original petition in this case urged against the orders complained of therein, and the report is the same said report containing the findings of fact and conclusions of the Commission, which was referred to and made a part of said orders in said original petition previously complained of; and that the enforcement or going into effect of those parts of Fourth Section Order No. 1361 of the Interstate Commerce Commission, amended by the Commission on the 8th day of October, A. D. 1912, as hereinabove set forth, which deny, effective December
231 1, 1912, that portion of said Application No. 1952 which seeks authority to continue to charge lower rates on traffic through Bowling Green, Kentucky, to and from Nashville, Tennessee, than

are contemporaneously in effect on like traffic to and from Bowling Green, Kentucky, and which deny, effective December 1, 1912, that portion of said Application No. 1952 which seeks authority to charge lower rates on oranges from Jacksonville, Florida, through Bowling Green, Kentucky, to Louisville, Kentucky, than are contemporaneously in effect on like traffic to Bowling Green, Kentucky, will result in taking petitioner's property without due process of law, in contravention of the Constitution of the United States, and more particularly in contravention of the Fifth Amendment thereto; and that said amended order, even if in form within the delegated power of the Commission, is the result of so unreasonable an exercise of said power that it is in substance beyond it; and that in the making and issuance of said amended order the Interstate Commerce Commission acted in a capricious and unreasonable manner, exceeded the authority delegated to it by Congress, and erred as a matter of law in all of the particulars in which the Commission so acted, exceeded authority and erred in making and issuing the orders complained of in the original petition herein, as set forth in said original petition, except with respect to those objections relating solely to the orders requiring the establishment of rates for the transportation of traffic from Bowling Green, Kentucky, to Montgomery, Alabama, not to exceed those contemporaneously maintained on the same traffic from Clarksville, Tennessee, to Montgomery, Alabama.

The substantive parts of Fourth Section Order No. 1361 of the Interstate Commerce Commission as amended by the Commission on the 8th day of October, A. D. 1912, which set forth the orders now specifically complained of, are as follows, to-wit:

232 It is ordered, That that portion of said Application, No. 1952, which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

It is further ordered, That that portion of said Application, No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

And these orders are parts of said Fourth Section Order No. 1361 as amended, and will be hereinafter referred to as the orders now complained of.

24. Petitioner says that the orders made and issued by the Interstate Commerce Commission on the 8th day of October, A. D. 1912, as hereinabove set forth, including the orders now complained of, were made and issued with the design and intent to accomplish the following purposes:

(*a*) To destroy the existing cause of action sought by petitioner to be enforced in this cause pending in this Honorable Court;

(*b*) To deprive this Honorable Court of all jurisdiction over this cause and the subject-matter thereof by so changing the form of

the orders as to accomplish substantially the same results sought to be accomplished by the orders in the original petition herein complained of, and yet have it appear that the orders issued by the Commission are negative orders, or orders resting solely within the discretion of the Commission and not subject to review by this Honorable Court;

233 (c) To prevent all judicial investigation and determination of the reasonableness, fairness and validity of the orders now complained of.

25. Petitioner says that the orders now complained of are not negative orders and are not orders resting solely in the discretion of the Interstate Commerce Commission, but are affirmative orders and are orders which this Honorable Court has jurisdiction to enjoin, set aside, annul or suspend. The enforcement of the orders complained of in connection with the Fourth Section of the Act to Regulate Commerce as amended June 18, 1910, in accordance with which section the orders complained of are pretended to be issued, would require affirmatively the doing of acts affirmatively required to be done by the former order of the Commission in the case of Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, versus Louisville & Nashville Railroad Company, et al., Docket No. 4310, in the original petition, and hereinabove set out and referred to, which order was vacated and set aside by the order of the Commission on the 8th day of October, A. D. 1912, as hereinabove set forth. That is to say, for example, the orders complained of, among other things, would require, if enforced, the establishment by petitioner and other defendants in the case of Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, versus Louisville & Nashville Railroad Company, et al., Docket No. 4310, before the Interstate Commerce Commission, for the transportation of traffic from New York and related points to Bowling Green, Kentucky, of rates not exceeding those contemporaneously maintained on the same traffic from the same points of origin to Nashville, Tennessee, when such traffic passes through Bowling Green, and would require the establishment and maintenance for the transportation of oranges from Jacksonville, Florida, to Bowling Green, Kentucky, of rates not ex-

234 ceeding those contemporaneously maintained on the same commodity from Jacksonville to Louisville when passing through Bowling Green.

Petitioner says that it is and will be the duty of the Interstate Commerce Commission, whenever a determination shall be had of petitioner's Fourth Section Application No. 1952, to grant said Fourth Section Application when the circumstances and conditions that were exhibited with respect to that application in the proceedings hereinabove referred to shall be exhibited and shown, and that said Commission cannot, according to its caprice or fancy, deny said application either in part or in whole without the right of petitioners to have a judicial review of such denial.

26. And petitioner further says that Bowling Green, Kentucky, itself, is one of the points with respect to lower rates to and from

which relief was asked as compared with higher rates to or from intermediate points in said Fourth Section Application No. 1952, and in said Fourth Section Application No. 1952 application was made by petitioner for itself and for carriers participating with it in the rates and traffic referred to, inter alia:

(*a*) For authority to continue to establish rates for the transportation of freight between Bowling Green, Kentucky, Louisville, Kentucky, and Nashville, Tennessee, lower than rates concurrently in effect from, to, or between intermediate points;

(*b*) For authority to charge and receive a less compensation in the aggregate for the transportation of like kinds of property for a longer than for a shorter distance over the same line or route in the same direction, the shorter being included within the longer distance for traffic—

(1) Originating at any of said points destined to any of said points.

235 (2) Originating at any of said points passing by way of any one or more of said points destined to points beyond.

(3) Originating beyond any of said points passing by way of any one or more of said points destined to any of said points.

(4) Originating at points beyond any of said points passing between any two or more of said points destined to points beyond any of said points, and,

(5) Passing between any of said points and intermediate points the rates to or from which intermediate points are based on rates to or from any of said points, or passing between intermediate points the rates to or from one or both of which are based on rates to or from any one of said points, or on local or mileage scales.

(*c*) For authority to continue the present practice of establishing rates to or from intermediate points based upon competitive or basing points plus a local differential or proportional charge from or to said competitive or basing points to or from said intermediate points, although said practice may result in the charging of a less rate to or from a more distant point then to or from an intermediate point over the same line or route in the same direction, the shorter being included within the longer distance; and

(*d*) For authority to continue to employ the principles, bases and adjustments upon which were constructed rates legally on file with the Interstate Commerce Commission, both as to traffic passing between points on its own rails and as to traffic passing between points one or both of which are not located upon petitioner's lines,

236 but for which it and its participating connections compete, etc.

And petitioner says that the hearing with respect to said Fourth Section Application No. 1952, upon which the report, findings of fact, conclusions and orders now complained of were based and made, did not relate to rates to and from Bowling Green, Kentucky, as compared with the rates to and from either Louisville, Kentucky, or Nashville, Tennessee, and did not relate specifically to rates on oranges from Jacksonville, Florida, through Bowling Green, Kentucky, to Louisville as compared with the rates on like traffic to Bowling

Green, Kentucky; but that, on the contrary, said hearing with respect to Fourth Section Application No. 1952, aforesaid, was held after argument and submission, to-wit, on March 6, 1912, of the case of Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, v. Louisville & Nashville Railroad Company, et al., I. C. C. Docket No. 4310, aforesaid, and pursuant to notice issued by the Interstate Commerce Commission on April 15, 1912, as follows, to-wit:

"That portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company which seeks authority to continue lower rates on traffic through Louisville, Ky., to and from Clarksville and Nashville, Tenn., than are charged on like traffic to and from intermediate stations between Louisville, Ky., — Clarksville and Nashville, Tenn., also that portion of the same application which seeks authority to continue lower rates on traffic through Nashville and Clarksville, Tenn., to or from Louisville, Ky., than are concurrently effective on like traffic to and from intermediate stations between Clarksville and Nashville, Tenn., and Louisville, Ky., is assigned for hearing April 29, 1912, ten o'clock A. M., at United States Court Room, Bowling Green, Ky., before Examiner Gaddess."

And said hearing covered rates on traffic through Louis-
237 ville, Kentucky, to and from Clarksville and Nashville, Tennessee, as compared with rates on like traffic to and from all intermediate stations between Louisville, Clarksville, and Nashville, and covered, also, rates on traffic through Nashville and Clarksville, Tennessee, to and from Louisville, Kentucky, as compared with rates on like traffic to and from all intermediate stations between Clarksville and Nashville and Louisville, and neither said Application No. 1952 nor such portions of said application with respect to which said hearing was held have yet been determined.

And petitioner further says that the Interstate Commerce Commission is without authority in law to issue any partial orders in connection with its said Fourth Section Application No. 1952, or any orders at all in connection with said application, until a final determination in full of such application by the Commission; and petitioner is entitled, under the fourth section of the Act to Regulate Commerce as amended June 18, 1910, as to all rates covered by its said Fourth Section Application No. 1952, to relief from the necessity, under said fourth section of the Act to Regulate Commerce, of changing any of such rates or charges until a determination in full of such application by the Commission.

And petitioner says that the Interstate Commerce Commission has no power or authority to pick out or select, as it has in the orders now complained of attempted to do, particular items of traffic and deny relief as to such items.

Petitioner further says that the action of the Interstate Commerce Commission with respect to the orders now complained of is an unwarranted and unlawful attempt to deprive petitioner of the due process of law and to deny to petitioner the right of a judicial review of the orders of the Commission, and that in the orders now

complained of the Interstate Commerce Commission is seek-
238 ing to do that by indirection which it cannot directly do, and to cloud the substance of the transaction by the form in which it is presented, and that such actions and attempt this Honorable Court as a court of equity should not permit, but should annul, enjoin, set aside and declare to be of no effect.

27. And petitioner further says that while the Interstate Commerce Commission in the orders now complained of have (for the purpose of granting as far as possible, under color of a Fourth Section Order, the prayer of Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, in said Docket No. 4310 before the Interstate Commerce Commission) endeavored to pick out or select particular items of traffic covered by said Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company, and have endeavored to pick out and select particular items of traffic covered by the partial hearing of said Fourth Section Application No. 1952 held, to-wit, on April 29, 1912, at United States Court Room, at Bowling Green, Kentucky, before Examiner Gaddess, the Commission have, on the other hand, in the said orders now complained of, included and embraced items of traffic with respect to which no hearing whatsoever has been notified, ordered, or had, under petitioner's Fourth Section Application No. 1952, or under any other application for relief in part or in whole from any provisions of Section 4 of the Act to Regulate Commerce as amended. That is to say, for example, said orders complained of deny said Application No. 1952 with respect to all traffic through Bowling Green, Kentucky, to and from Nashville, Tennessee, whereas the only hearing that has been had with respect to that portion of said Application No. 1952 relating to traffic to and from Nashville, Tennessee, was limited to that portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company which
239 seeks authority to continue lower rates on traffic through Louisville, Kentucky. Under the orders now complained of higher rates can not be charged on traffic moving from New York, N. Y., and related points to Bowling Green, Kentucky, than those contemporaneously maintained over the same lines on the same traffic from the same points of origin to Nashville, Tennessee, when such traffic passes through said Bowling Green; and one of the principal routes from New York, N. Y., and related points to Bowling Green, Kentucky, and to Nashville, Tennessee, in which petitioner is interested, and of which its lines form a part, is the route of the Cumberland Gap Dispatch, which operates from the east over the Norfolk & Western Railway to the junction with petitioner's lines at Norton, Virginia, and thence via petitioner's lines to Lebanon Junction, Kentucky, a junction on petitioner's main line between Louisville, Kentucky, on the one hand, and Bowling Green, Kentucky, and Nashville, Tennessee, on the other hand, about 30 miles south of Louisville, Kentucky, traffic through which point to and from Nashville, Tennessee, passes through Bowling Green, Kentucky, but does not pass through Louisville, Kentucky. And under said orders now complained of lower rates can not be charged for the

transportation of freight between Knoxville, Tennessee, on petitioner's lines, and Nashville, Tennessee, moving via Lebanon Junction, Kentucky, and through Bowling Green, Kentucky, than are charged via the same route between Bowling Green, Kentucky, and Knoxville, Tennessee, although petitioner's interstate rates between Knoxville, Tennessee, and Nashville, Tennessee, are made in competition with intrastate rates between Nashville, Tennessee, and Knoxville, Tennessee, via other lines of railroad and via shorter lines of railroad, and business moving via petitioner's lines between Nashville, Tennessee, and Knoxville, Tennessee, through Lebanon Junction, Kentucky, does not pass through Louisville, Kentucky.

240 And petitioner further says that under a literal interpretation of the orders now complained of higher rates cannot be charged between Louisville, Kentucky, or between any stations intermediate between Louisville, Kentucky, and Bowling Green, Kentucky, on the one hand, and Bowling Green, Kentucky, on the other hand, than are charged between said intermediate stations and Nashville, Tennessee, and the rates between Louisville, Kentucky, proper, and Bowling Green, Kentucky, proper, and the rates between Bowling Green, Kentucky, proper, and points between Bowling Green and Louisville, when not originating at or destined to points beyond, are intrastate rates, and are not within the jurisdiction of the Interstate Commerce Commission. And if said rates between Bowling Green and stations intermediate to Bowling Green and Louisville cover any interstate traffic originating at or destined to points beyond said intermediate stations or beyond Bowling Green, Kentucky, such traffic is traffic which does not pass through Louisville, and no hearing with respect to such traffic has been had under any application for relief from the provisions of the fourth section of the Act to Regulate Commerce.

And petitioner accordingly says that the orders of the Interstate Commerce Commission complained of are orders made without authority and without full hearing or investigation, and should be declared unlawful and void on that account.

28. Petitioner further says that this suit is a suit in equity and arises under the Constitution and Laws of the United States, and the amount in controversy in this case, without interest and costs, far exceeds the sum and value of three thousand dollars ($3,000), as will hereafter be more specifically shown. Among other things, this suit is brought to redress and prevent deprivation under color of the Act to Regulate Commerce of certain rights and immunities secured to petitioner by the Constitution of the United States; that is to

241 say, the right to have and enjoy its property without being deprived thereof without due process of law, and without having its property taken for public use without just compensation. And this suit, moreover, involves the question as to whether or not the orders now complained of unlawfully seek to apply the provisions of the Act to Regulate Commerce to the transportation of property wholly within the State of Kentucky and not shipped to or from a foreign country from or to any State or territory.

29. And petitioner further avers that unless the orders now com-

plained of be set aside and annulled upon final hearing by this Honorable Court of this suit, and unless their operation be restrained and suspended by this Honorable Court on or before the 1st day of December, 1912, pending the final hearing and determination of this suit, petitioner will, by reason of enormous penalties provided by the Act to Regulate Commerce, be compelled to put said orders into effect, and that such action will result in irreparable loss to petitioner, and your petitioner will be subjected to great loss and damage and irreparable injury; for all of which your petitioner is without adequate remedy at law. And petitioner further states that among other items irreparable damage would be suffered by it in the following particulars, to-wit:

There would be a reduction and loss of revenue to petitioner on business received at Bowling Green, Kentucky, of not less than twenty thousand dollars ($20,000) per annum, and there would be a loss to petitioner on freight forwarded from Bowling Green, Kentucky, of not less than eleven thousand dollars ($11,000) per annum, and in addition, there would be losses to petitioner both on inbound and on outbound business at stations contiguous to Bowling Green, and reduction in petitioner's revenue would result from the requirement that not higher than the sums of intermediate
242 rates be charged on business to and from such stations, and if the orders now complained of are permitted to go into effect, and the revenues of petitioner are accordingly reduced, as above set forth, and it should be subsequently determined that said orders are unlawful or beyond the power of the Interstate Commerce Commission to make, petitioner would not be able to make collection of the undercharges from the shippers or consignees of the freight and would be unable in any way to repair the damage suffered through the enforcement or operation of said orders in connection with the provisions of the Act to Regulate Commerce.

In consideration whereof, Petitioner prays that the said orders of the Interstate Commerce Commission now complained of may be wholly enjoined, set aside and annulled, and that a preliminary injunction may be awarded restraining the enforcement and operation thereof, and that such other further and full relief may be granted as the case requires.

And to this end petitioner prays that the United States of America, as a party defendant to this supplemental petition as well as to the original petition in this cause, and the Interstate Commerce Commission as an intervener herein may be required to answer the allegations herein contained, an answer under oath being now expressly waived.

And as in duty bound, petitioner will ever pray, etc.

ALBERT S. BRANDEIS,
WILLIAM A. COLSTON,
Solicitors for the Louisville & Nashville Railroad Company.

UNITED STATES OF AMERICA,
Jefferson County,
State of Kentucky, ss:

Personally appeared before me, G. W. B. Olmstead, a Notary Public in and for the aforesaid State and County, C. B. Compton, who, first being duly sworn, deposes and says:

243 That he is a Freight Traffic Manager of the Louisville & Nashville Railroad Company, petitioner in the foregoing supplemental petition; that he has read the foregoing supplemental petition and knows the contents thereof, and that the matters therein stated are true.

C. B. COMPTON.

Subscribed and sworn to before me this 25th day of October, 1912. My commission as Notary Public expires January 24, 1914.

In witness whereof, I have hereunto signed my name and affixed my notarial seal this 25th day of October, A. D. 1912.

[SEAL.] G. W. B. OLMSTEAD,
Notary Public, Jefferson County, Ky.

244 Exhibit "D" to the Petition, referred to in the foregoing Præcipe and filed in the United States Commerce Court on May 14th., 1913, is as follows:

United States Commerce Court.

No. 86. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
versus
UNITED STATES OF AMERICA, Respondent.

EXHIBIT D.

Transcript of the Hearings held in I. C. C. Docket No. 4310 and with Reference to Fourth Section Application No. 1952, at Bowling Green, Kentucky, on November 27 and 28, 1911, before Special Examiner G. P. Boyle, and at Bowling Green, Kentucky, on April 29, 1912, before Special Examiner E. L. Gaddess.

Referred to in the Petition as Exhibit D and, when Filed Prayed to be Read as Part Thereof in the Above-entitled Case.

ALBERT S. BRANDEIS,
WILLIAM A. COLSTON,
Solicitors for the Louisville & Nashville Railroad Company.

245 In the United States Commerce Court.

No. 86. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
versus
UNITED STATES OF AMERICA, Respondent.

Index.

	Page
Certificate of the Secretary of the Interstate Commerce Commission	1
Caption	1
Appearances	1
Proceedings	2
Testimony of W. C. Sumpter	6
Samuel Cristal	38
R. C. Duncan	47
B. G. Davidson	65
M. H. Crump	76
R. W. Smith	89
H. D. Graham	91
E. A. Greer	102
Charles E. Fulton	119
R. C. Duncan (recalled)	134
D. M. Goodwyn	135
B. G. Davidson (recalled)	199
Complainant's Exhibit No. 1	202
No. 2	253
Defendants' Exhibit No. 1, map	277
Deposition of E. E. Bewley	293
246 Certificate of secretary	317
Testimony of D. M. Goodwyn	327
E. K. Bryan, Jr	342
Hearing closed	345
Brief for defendants	347
Louisville & Nashville Exhibit No. 2	405
No. 3	406
No. 4	407
No. 5	408
No. 6	410
No. 7	411
No. 8	412
No. 9	413
No. 10	414
No. 11	415
No. 12	416
No. 13	417
No. 14	417
Affidavit of W. A. Colston	418
Explanatory letter from D. M. Goodwyn	424

247 Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the papers and documents hereto attached are true copies of all the evidence introduced by the parties at the hearings in the proceeding before the Interstate Commerce Commission in the case of the Bowling Green Business Men's Protective Association against the Louisville and Nashville Railroad Company and others, docket No. 4310, the originals of which are now on file and of record in the office of this Commission. The documents and testimony referred to in this record on page 434 were not actually filed herein and are not included in this record.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Commission this 27th day of January, 1913.

[Seal of Interstate Commerce Commission.]

JOHN H. MARBLE,
Secretary of the Interstate Commerce Commission.

Before the Interstate Commerce Commission.

Docket No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION, Complainant,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY et al., Defendants.

BOWLING GREEN, KENTUCKY,
November 27th, 1911—10:00 a. m.

Before G. P. Boyle, Special Examiner.

Met pursuant to notice.

Appearances:

T. W. and R. C. P. Thomas (Bowling Green, Ky.), Attorneys for Complainants.

W. A. Colston (Louisville, Ky.), Attorney for the Louisville & Nashville Railroad Company and the New York & Hudson River Railroad Company, Defendants.

D. P. Connell (612 Union Trust Building, Detroit, Michigan), Attorney for Lake Shore & Michigan Southern Railway Company, Michigan Central Railroad Company, New York Central and Hudson River Railroad Company, and West Shore Railroad Company, Defendants.

C. E. Fulton (1027 Rookery Building, Chicago, Ill.), Attorney for Chicago-Ohio River Lines.

248 *Index of Witnesses.*

	Page
W. C. Sumpter	14
Samuel Cristal	92
R. C. Duncan	112
A. S. Hindes	143
B. G. Davidson	156
M. H. Crump	183
R. W. Smith	215
H. D. Graham	219
E. A. Greer	248
Charles E. Fulton	288
R. C. Duncan (recalled)	325
D. M. Goodwyn	328

Index of Exhibits.

Complainant's Exhibit No. 1	198
" " No. 2	198
Defendants' Exhibit No. 1	334
" " No. 2	392
" " No. 3	393

Proceedings.

Examiner Boyle: Gentlemen, the Interstate Commerce Commission has set for hearing at this place to-day the case of Bowling Green Business Men's Protective Association, of Bowling Green, Kentucky, versus the Louisville & Nashville Railroad Company, et al., numbered on its Docket, 4310. Mr. Thomas, you appear for the complainants, I believe?

Mr. Thomas: Yes sir.

Examiner Boyle: Your firm is——

Mr. Thomas: T. W. & R. C. P. Thomas.

Examiner Boyle: For the Louisville & Nashville Railroad Company?

Mr. Colston: W. A. Colston.

Examiner Boyle: For the Nashville, Chattanooga & St. Louis Railway?

(No response.)

Examiner Boyle: Western & Atlantic Railroad?

(No response.)

Examiner Boyle: Evansville & Terre Haute?

Mr. Fulton: There is no Evansville & Terre Haute Railroad. That is the Chicago & Eastern Illinois.

Examiner Boyle: Chicago & Eastern Illinois. They are made parties separately, I notice here. Norfolk & Western Railway,

(No appearance.)

Examiner Boyle: Lake Shore & Michigan Southern?

Mr. Connell: D. P. Connell.

249 Examiner Boyle: Michigan Central?

Mr. Connell: D. P. Connell.

Examiner Boyle: Cincinnati, Hamilton & Dayton?
Mr. Fulton: C. E. Fulton.
Examiner Boyle: Pennsylvania Company?
(No appearance.)
Examiner Boyle: Pennsylvania Railroad Company?
(No appearance.)
Examiner Boyle: Baltimore & Ohio?
(No appearance.)
Examiner Boyle: Baltimore & Ohio Southwestern Railroad Company?
Mr. Fulton: C. E. Fulton.
Examiner Boyle: Chicago, Indianapolis & Louisville Railway Company?
Mr. Fulton: C. E. Fulton.
Examiner Boyle: Rapid Railroad Company?
(No response.)
Examiner Boyle: Cleveland, Cincinnati, Chicago & St. Louis Railway Company?
Mr. Connell: D. P. Connell.
Examiner Boyle: Maine Central Railroad Company?
(No response.)
Examiner Boyle: New York Central & Hudson River Railroad Company?
Mr. Connell: D. P. Connell.
Examiner Boyle: Delaware, Lackawanna & Western Railroad Company?
(No response.)
Examiner Boyle: West Shore Railroad Company?
Mr. Connell: D. P. Connell.
Examiner Boyle: Chesapeake & Ohio Railroad Company?
(No response.)
Examiner Boyle: Illinois Central Railroad Company?
Mr. Fulton: C. E. Fulton.
Examiner Boyle: Southern Railway?
(No response.)
Examiner Boyle: New York, New Haven & Hartford Railroad Company?
Mr. Colston: W. A. Colston.
Examiner Boyle: Boston & Albany Railroad Company?
(No response.)
Examiner Boyle: Boston & Maine Railroad?
(No response.)
Examiner Boyle: New York, Chicago & St. Louis Railroad Company?
(No response.)
Examiner Boyle: Pere Marquette Railroad Company?
(No response.)
Examiner Boyle: Philadelphia & Reading Railway Company?
(No response.)
250 Examiner Boyle: Pittsburg, Cincinnati, Chicago & St. Louis Railway Company?

Mr. Fulton: C. E. Fulton.
Examiner Boyle: Lehigh Valley Railroad Company?
(No response.)
Examiner Boyle: The Wabash Railroad Company?
(No response.)
Examiner Boyle: Old Dominion Steamship Company?
(No response.)
Examiner Boyle: Merchants & Miners Transportation Co.?
(No response.)
Examiner Boyle: The Maine Steamship Company?
(No response.)

Examiner Boyle: Now, from a perusal of the pleadings in this case, the petition strikes me as very fully setting forth the rates as well as the conditions complained of, the rates being set forth quite in detail. The Answer of the Louisville & Nashville Railroad Company states that the rates are substantially as set forth, except that in the list of commodity rates in paragraph IX, there are a number of inaccuracies which they will show. In one or two minor details I believe the Louisville & Nashville except to the rates as set forth, one instance being they have alleged that certain rates are not published as through rates, but are published as combinations. I believe, however, that does not affect the amount of the through rate, they meaning by through rate, joint rate, I suppose. And another point being that the rates south of the Ohio River are governed by Southern classification only, when there is no exception which otherwise affects the rate.

Mr. Colston: As relates to the Louisville & Nashville Railroad Company, the Southern classification applies only in connection with Note 28? I believe so far as the rates themselves are concerned, they are substantially set forth in the petition, except that the Louisville & Nashville will show that paragraph 9, containing commodity rates, is not exactly correct.

Mr. Colston: There is an error in the statement of the rates on oranges from Jacksonville.

Examiner Boyle: Other than in those details, I believe the rates as alleged, in the live stock rates——

Mr. Thomas: In your answer you pointed that out.

Examiner Boyle: I mentioned that, so that we could avoid, if possible, going into the question of what the actual rates are. That is, we won't review every paragraph of the petition setting forth the rates, but only deal with them in so far as some error is alleged by the defendants. It might be, too, that it will be better to let that come from the defendants as information in the form of exhibits. However, I leave that to counsel to decide. So that the preliminary question that we have to deal with is one of discrimination, and concretely stated, I believe, is about as follows: that on traffic from Bowling Green, northbound, Bowling Green seeks to have rates that will not be higher than Nashville and Clarksville, both of which points are south of Bowling Green; on traffic southbound
251 Bowling Green seeks rates that will not be higher than the rates from Louisville. I believe that is briefly stated——

Mr. Thomas: What is that last proposition?

Examiner Boyle: On traffic south bound from Bowling Green you seek rates that will not be higher than the rates applying from Louisville; the rates are alleged to be unreasonable in and of themselves, and in violation of section 1, and in discrimination, in violation of section 3, and higher for the shorter than for the longer haul, which lies under section 4.

Mr. Thomas: Yes sir.

Examiner Boyle: The Answer sets up, however, that the application has been filed for relief under Section 4, and that that application embraces the rates here complained of.

Mr. Thomas: Is that application still pending?

Mr. Colston: Yes sir; not acted upon.

Examiner Boyle: Not acted upon, but we can here take testimony as to the question of discrimination, and if there is anything else you care to say by way of an opening statement, you may do so, otherwise we will proceed with the taking of testimony. I merely make this outline for the sake of confining the issues as narrowly as possible, so that we may dispose of this without taking any cumulative testimony, or without having the witnesses testify to something that is admitted.

Mr. Thomas: I desire to call the Commission's attention to the fact that there were two witnesses that we expected to have here, and wanted to have here to-day, that are not here; one whose testimony I asked the Commission to permit me to take by deposition, and Chief Examiner Brown wrote a letter refusing permission to take the deposition, saying that he would have an examiner here and it could be taken then. That was Captain E. W. Bewley. He is absent on the river, and by telephone in connection with him yesterday evening, we learned that he could not get here until Wednesday or Thursday. I suggest now his absence, at the conclusion of our testimony here to-day, and before concluding the case and submitting it, to ask the privilege of having his evidence taken, either before the Examiner at some time when he can be present, or by deposition. We also asked to subpœna Capt. Lee Howell, president of the Evansville & Bowling Green Packet Company, and also General Freight Agent for the Louisville & Nashville Railroad Company in the Evansville District—holding both positions. That application was made by affidavit, asking a subpœna for him to testify in person, and also making it a subpœna duces tecum to bring with him certain correspondence. The Commission replied that it was not the practice to give subpœnas duces tecum until it became apparent that the documentary evidence desired or the correspondence desired would be material to the issue. As to the subpœna for his personal appearance, I have heard nothing further. I do not see him here today. It is likely when we are through with this evidence, we shall ask an opportunity to have his evidence.

252 Mr. Goodwyn: I would like to state, Mr. Examiner, that Captain Howell, who, as Mr. Thomas states, is our General Freight Agent at Evansville, has been very seriously and desperately ill for quite a while in Chicago, in a hospital and in-

firmary, and was just recently brought back to his home, and he is physically unable to be here without serious danger to his life.

Mr. Thomas: In view of that statement, we may ask an opportunity to visit Evansville and take his deposition, if he is unable to leave there—if he is in a physical condition to give it.

Examiner Boyle: I would suggest, Mr. Thomas, that we proceed and hear the testimony of such witnesses as we have, but before you conclude your case, I would like a statement from you as to just what you propose to prove by these witnesses, and at that time, we will be better able to determine.

Mr. Thomas: That's right. I want them to know that I knew in advance that they were not here, and give the facts. I am ready to proceed.

W. C. SUMPTER was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Thomas: What is your name, age, residence and occupation?

Mr. Sumpter: W. C. Sumpter. I don't like to give my age. It is forty-seven. Residence, City of Bowling Green. Occupation, general merchandise and contractor; wholesale merchant.

Mr. Thomas: What line of merchandise and contracting have you been engaged in?

Mr. Sumpter: Well, in a sort of general line, contractor generally. We handle glassware, queensware and tinware, paints, oils, varnishes—in fact, a general line of merchandise—lamp chimneys, lamp goods.

Mr. Thomas: Do you also sell by retail in the City of Bowling Green?

Mr. Sumpter: Yes.

Mr. Thomas: What is the style of your firm?

Mr. Sumpter: J. B. Sumpter & Brother.

Mr. Thomas: How long have you been engaged in this business?

Mr. Sumpter: About thirty-five years—the firm has.

Mr. Thomas: How long have you been connected with it?

Mr. Sumpter: All my life, ever since I was old enough to do anything.

Mr. Thomas: How long have you resided in Bowling Green, Kentucky?

Mr. Sumpter: All my life.

Mr. Thomas: What is the population of Bowling Green?

Mr. Sumpter: I think the census taken by the enumerators for our new directory gives a little rise of eleven thousand, but I think the Government census is nine thousand one hundred and twenty-two, or something like that.

Mr. Thomas: The census of 1910?

253 Mr. Sumpter: The census of 1910. But this was recently, the census I speak of.

Mr. Thomas: I will get you to look in there and state the popula-

tion given by that directory, and the statement made by the directory, and the date?

Mr. Sumpter: This was a census taken by the Hoffman Directory Company, of Quincy, Illinois, 1911—11,151. I will state this was taken by Hoffman Directory Company, under the management and direction of the Business Men's Protective Association, because we believed that we had a larger population than was given us by the National enumerators.

Examiner Boyle: That is a general complaint throughout the country.

Mr. Sumpter: Yes, sir, that is true.

Mr. Thomas: Everybody thinks that. Do you remember what the census taken by the city a few years ago for taxation purposes was?

Mr. Sumpter: I think it was about twelve thousand.

Mr. Thomas: You speak of the Bowling Green Business Men's Protective Association: what is that?

Mr. Sumpter: It is an organization for the upbuilding of the business interests—protection of the members and the city of Bowling Green.

Mr. Thomas: Who composes its membership?

Mr. Sumpter: The business men—the merchants—about one hundred of the merchants and business people of the city.

Mr. Thomas: How long has it been in existence?

Mr. Sumpter: About seven years.

Mr. Thomas: Incorporated?

Mr. Sumpter: Yes, sir.

Mr. Thomas: What connection do you hold with that Association?

Mr. Sumpter: President.

Mr. Thomas: How long have you been president?

Mr. Sumpter: About four years.

Mr. Thomas: Who is the Secretary?

Mr. Sumpter: Mr. H. D. Graham.

Mr. Thomas: On what railroad is Bowling Green located?

Mr. Sumpter: On the Louisville & Nashville Railroad.

Mr. Thomas: Main line?

Mr. Sumpter: Yes, sir.

Mr. Thomas: How far from Louisville?

Mr. Sumpter: One hundred and fourteen miles.

Mr. Thomas: How far from Nashville?

Mr. Sumpter: Seventy-two, I believe.

Mr. Thomas: Is Louisville north of Bowling Green?

Mr. Sumpter: Yes, sir.

Mr. Thomas: No, Nashville, south of Bowling Green?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Louisville, Bowling Green and Nashville, on the main line of the L. & N. Railroad?

254 Mr. Sumpter: Yes, sir.

Mr. Thomas: How far from Bowling Green does the Memphis Branch of the L. & N. Railroad begin?

Mr. Sumpter: It is about one mile from the limits, I think.
Mr. Thomas: Where is it? What is the place called?
Mr. Sumpter: Oh, you mean at the junction?
Mr. Thomas: Yes, the junction?
Mr. Sumpter: It is about four miles, I think, from the city.
Mr. Thomas: Double track from Bowling Green to Memphis Junction?
Mr. Sumpter: Yes, sir, out a little distance from the town.
Mr. Thomas: To the junction is four miles?
Mr. Sumpter: Yes, sir.
Mr. Thomas: What railroad is Clarksville situated on?
Mr. Sumpter: To make connection with Bowling Green on the Memphis Branch.
Mr. Thomas: How far from Bowling Green?
Mr. Sumpter: About sixty-three miles.
Mr. Thomas: South of Bowling Green?
Mr. Sumpter: Yes, sir.
Mr. Thomas: And on the Memphis Branch of the Louisville & Nashville Railroad?
Mr. Sumpter: Yes, sir.
Mr. Thomas: Freight originating in the east, at any eastern point, coming through Louisville, Kentucky, going to Nashville, Tennessee, passes by Bowling Green?
Mr. Sumpter: Yes, sir, some of it.
Mr. Thomas: If it is over the L. & N. Railroad?
Mr. Sumpter: If it goes over the L. N., it passes through Bowling Green, yes, sir.
Mr. Thomas: If it goes to Clarksville, Tennessee, originates in the east and comes by Louisville, and travelling over the L. & N. Railroad, does it pass through Bowling Green?
Mr. Sumpter: Yes, sir, it passes through Bowling Green.
Mr. Thomas: Freight leaving Bowling Green and going south and southeast and southwest over the Louisville & Nashville main line, would that pass through Nashville, Tennessee?
Mr. Sumpter: Yes, sir.
Mr. Thomas: Originating at Bowling Green and traveling to the southward and going over the Memphis Branch, does it pass through Clarksville?
Mr. Sumpter: Yes, sir.
Mr. Thomas: On the same line?
Mr. Sumpter: The same line.
Mr. Thomas: What is the population of Clarksville, Tennessee?
Mr. Sumpter: I think the census gives them about nine thousand.
Mr. Thomas: A city about the size of Bowling Green?
Mr. Sumpter: Something like it.
Mr. Thomas: Do you know the population of Nashville,
255 Tennessee?
Mr. Sumpter: No, sir, I do not.
Mr. Thomas: Has Bowling Green any other railroad except the

main line of the Louisville & Nashville Railroad to carry freight in any direction?

Mr. Sumpter: No, sir, none only the Memphis Branch.

Examiner Boyle: Your answer is that you have Louisville & Nashville main line and the Memphis Branch?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Is Bowling Green on any river?

Mr. Sumpter: Yes, sir.

Mr. Thomas: What river?

Mr. Sumpter: The Barren.

Mr. Thomas: What outlet has it for traffic by river?

Mr. Sumpter: Well, it is through Barren into Green, thence into the Ohio, then out to the Gulf.

Mr. Thomas: What is the distance on Barren River to Green River?

Mr. Sumpter: I don't know just what that is.

Mr. Thomas: Where does Barren River empty into Green?

Mr. Sumpter: At Woodbury.

Examiner Boyle: How far is that?

Mr. Thomas: Thirty miles by river and twenty miles by land. How far is it from Bowling Green, Kentucky, to Evansville, Indiana?

Mr. Sumpter: I think about two hundred and fifty miles.

Mr. Thomas: Two hundred is correct.

Mr. Sumpter: Two hundred.

Mr. Thomas: Is this river navigable—Green and Barren Rivers?

Mr. Sumpter: It is navigable all the year.

Mr. Thomas: How was it made navigable?

Mr. Sumpter: Oh, by locks and dams, owned and maintained by the Government.

Mr. Thomas: It is a free river?

Mr. Sumpter: Free river, yes, sir.

Mr. Thomas: How long have those locks and dams on Barren River and lower Green River been in existence?

Mr. Sumpter: Well, on lower Green and Barren, I think about 1840, or something like that—put in by the State.

Mr. Thomas: Whom were those locks and dams originally built by?

Mr. Sumpter: Built by the State of Kentucky.

Mr. Thomas: Do you know how long they were kept by the State?

Mr. Sumpter: No, sir, not exactly; I think about until '67 or '68.

Mr. Thomas: 1868?

Mr. Sumpter: The old Green River and Barren River Navigation Company took charge.

Mr. Thomas: Leased them?

Mr. Sumpter: Yes, sir.

Mr. Thomas: How long, you know?

256 Mr. Sumpter: Thirty years.

Mr. Thomas: The Green River Navigation Company had charge of it, did they, operating a line of tow boats?

Mr. Sumpter: Yes, sir.
Mr. Thomas: And barges and carrying passengers and freight?
Mr. Sumpter: Yes, sir.
Mr. Thomas: Between what points?
Mr. Sumpter: Between Bowling Green and Evansville.
Mr. Thomas: And intermediate points?
Mr. Sumpter: Yes, sir, Bowling Green, Kentucky.
Mr. Thomas: And Evansville, Indiana, and intermediate points?
Mr. Sumpter: Yes, sir.
Mr. Thomas: How much of the distance between here and Evansville is on the Ohio?
Mr. Sumpter: I could not tell you exactly.
Mr. Thomas: Nine and a fraction or ten miles, isn't it?
Mr. Sumpter: Yes, sir.
Mr. Thomas: Any objection to that answer going in?
Mr. Colston: No, sir.
Examiner Boyle: These questions of distances can be agreed upon.
Mr. Colston: They can be verified from the geography.
Mr. Thomas: I wanted to get an outline. In 1886 the river was ceded to the United States Government by the State of Kentucky, and the lease of the Navigation Company purchased by the Government; since that time has the Government controlled the river?
Mr. Sumpter: Yes, sir.
Mr. Thomas: Since they have taken charge have any locks been built on Green River between the place where it joins the Barren and the Mammoth Cave, for instance.
Mr. Sumpter: Yes, sir, two.
Mr. Thomas: Is Green River, above its confluence with Barren River, navigable then to Mammoth Cave?
Mr. Sumpter: Yes, sir.
Mr. Thomas: How many packets carrying passengers and freight do you have between Bowling Green and Evansville, per week?
Mr. Sumpter: Four boats a week.
Examiner Boyle: In what direction?
Mr. Sumpter: It goes back and forth.
Examiner Boyle: You mean two round trips?
Mr. Sumpter: Two round trips, yes, sir.
Mr. Thomas: Two round trips a week?
Mr. Sumpter: Yes, sir, for two boats—four trips.
Mr. Thomas: Two packets?
Mr. Sumpter: Yes, sir, two packets; four trips—Mondays, Wednesdays, Fridays and Saturdays.
Mr. Thomas: On what days?
Mr. Sumpter: Wednesdays, Fridays and Saturdays.
Mr. Thomas: Monday, too?
Mr. Sumpter: Yes, sir, Mondays.
257 Examiner Boyle: You mean they leave here on each of those days?
Mr. Sumpter: Yes, sir, and arrive.
Mr. Thomas: I will ask you the question: They arrive and leave here on those respective days that you have named?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Is there any other boat that makes Bowling Green and any other points on Green River?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Has it points of destination?

Mr. Sumpter: Yes, sir.

Mr. Thomas: What points?

Mr. Sumpter: Well, it has Mammoth Cave—beginning at Bowling Green and running on down to Woodbury on the Green to the Cave and asphalt mines.

Mr. Thomas: You mean the boat called the Chaperone?

Mr. Sumpter: Yes, sir.

Mr. Thomas: You don't mean the Mammoth Cave boat. That is a Government boat.

Mr. Sumpter: Yes, sir, that is a government boat.

Mr. Thomas: How many times a week does that make a trip between here and Mammoth Cave, do you know?

Mr. Sumpter: Twice a week.

Mr. Thomas: You were raised in Bowling Green; how long have you known these passenger and freight boats being in continuous operation between Bowling Green, Kentucky, and Evansville, Indiana?

Mr. Sumpter: All of my life, since 1840, I suppose the river has been open, that is the time the locks were built.

Mr. Colston: I thought you were about seventy-one years old.

Mr. Thomas: Are those boats good size, commodious steamers for carrying passengers and freight?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Are those boats capable of making their weekly trip or double weekly trip throughout the year continuously from Bowling Green to Evansville and from Evansville to Bowling Green without interruption on account of law water?

Mr. Sumpter: Yes, sir.

Mr. Thomas: In other words, the pools of the Green and Barren River-, as maintained by the system of locks and dams, are so successful that the traffic is continuous?

Mr. Sumpter: Continuous, yes, sir.

Mr. Thomas: As to being interfered with by ice at any time: Does the river freeze up?

Mr. Sumpter: Not to any extent—to any great extent, I think; in Green River the boats, I think, all come in for shelter from the lower end of the Ohio, I suppose it does—only a third of the distance, though.

Mr. Thomas: Are these Green and Barren Rivers with their deep pools open throughout the entire season?

258 Mr. Sumpter: Yes, sir, throughout the entire season.

Mr. Thomas: Only once in a great many years there will be a thin coat of ice on it?

Mr. Sumpter: Yes, sir.

Mr. Thomas: What other terminal facilities owned by Bowling

Green in reference to the landing of boats, and how was it until recently?

Mr. Sumpter: Well, up until recently Lee Howell owned the wharf.

Mr. Thomas: You mean the Evansville and Bowling Green Packet Company?

Mr. Sumpter: Yes, sir, the Evansville & Bowling Green Packet Company. I think, however, the deed is in Lee Howell, personally.

Mr. Thomas: Who is Mr. Lee Howell, of whom you speak?

Mr. Sumpter: He is president of the Evansville & Bowling Green Packet Company of Evansville.

Mr. Thomas: Is he or not also General Freight Agent of the Louisville & Nashville Railroad Company for the Evansville Division?

Mr. Sumpter: Yes, sir.

Mr. Thomas: You mean until recently that that Packet Company owned the only wharf?

Mr. Sumpter: The only wharf, yes, sir.

Mr. Thomas: For landing at Bowling Green?

Mr. Sumpter: That was the same wharf that was owned originally by the old Green River Navigation Company.

Mr. Thomas: And the one that had been used from the beginning?

Mr. Sumpter: From the beginning.

Mr. Thomas: For the landing of boats?

Mr. Sumpter: Yes, sir.

Mr. Thomas: That was purchased by Captain Lee Howell, or by whom?

Mr. Sumpter: By the boat company.

Mr. Thomas: Boat company, since the Government took charge of the locks?

Mr. Sumpter: Yes, sir.

Mr. Thomas: At the present time does the City own any wharf?

Mr. Sumpter: Yes, the City and county jointly owns and is pledged to maintain a public wharf perpetually.

Mr. Thomas: Did this club, of which you are President, have anything to do with the purchase of that wharf and its establishment as a public wharf?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Is it or not a standard and available wharf for the landing of boats?

Mr. Sumpter: Captain Overstreet says that it is the best wharf on the river.

Mr. Thomas: Who is Captain Overstreet?

Mr. Sumpter: He is head of the Government fleet; has charge of the locks and dams on the Green and Barren Rivers.

Mr. Thomas: Do you know the number of acres in the wharf?

259 Mr. Sumpter: Yes, sir, there is five acres.

Mr. Thomas: Do you know the river frontage?

Mr. Sumpter: Yes, sir.

Mr. Thomas: How many?

Mr. Sumpter: There is about four hundred and some odd feet.

Mr. Thomas: Nine hundred feet——

Mr. Sumpter: Of available wharf there is more than that, but I mean in good condition.

Mr. Thomas: Nine hundred feet of river front?

Mr. Sumpter: Yes, sir, nine hundred feet of river front.

Mr. Thomas: Is there a public road which leads to it which has been recently made, macadamized and built by the County of Warren?

Mr. Sumpter: Yes, sir.

Mr. Thomas: To low water mark?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Without going into detail as to amount, do you know whether or not the freight delivered at Bowling Green by the river has declined or increased since the General Freight Agent of the Louisville & Nashville Railroad Company became President of the Evansville & Bowling Green Packet Company and put in a line of boats?

Mr. Sumpter: It has decreased.

Examiner Boyle: When was that?

Mr. Thomas: About 1893, I think. Do you know of any efforts on the part of the citizens of Bowling Green to operate a boat of their own and in their own behalf in order to maintain and keep up the river traffic and to influence freight rates to Bowling Green?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Through what steamer?

Mr. Sumpter: Steamer Sun.

The Stenographer: How do you spell that?

Mr. Thomas: S-u-n, Sun. It rose and set; therefore it was spelled S-u-n, Sun.

Examiner Boyle: They must have anticipated that.

Mr. Thomas: It is almost the universal result when you come in contact with the things they came in contact with.

Mr. Colston: Departing from the usual custom, it rose in the west.

Mr. Thomas: Prior to the time the Sun was put in by the merchants of Bowling Green, had there or not been an effort by individuals to maintain a boat?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Who was master of that boat?

Mr. Sumpter: Captain Bewley.

Mr. Thomas: Is that an independent boat?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Prior to that did not Mr. Meyler have a boat?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Who owned the Sun.

Mr. Sumpter: Well, the merchants, practically, combined with Captain Bewley.

Mr. Thomas: They bought the boat, though.

260 Mr. Sumpter: Yes, sir.

Mr. Thomas: Put up the money for it?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Do you know how long it operated?
Mr. Sumpter: No, sir, I do not.
Mr. Thomas: Captain Bewley would know?
Mr. Sumpter: Yes, sir, Captain Bewley would know.
Mr. Thomas: When the Sun was in operation, while it was in operation, what was the result on freight rates in Bowling Green by the railroad as well as by the line of boats that was running in opposition to the Sun?
Mr. Sumpter: Well, of course, we had stipulated rates on the Sun, and it was our boat and our child, and we tried to stick close to it, but we had all kinds of rates, and opportunities to get freight in by other routes than the Sun. Rates were cut all to pieces in order to put the Sun out of business.
Mr. Thomas: Do you mean to tell the Commissioner that when the Sun was in operation, while you had a stipulated rate of freights for operation on the Sun, that on the L. & N. Railroad Company's line into and out of Bowling Green and on the line of boats owned and operated by the General Freight Agent of the Louisville & Nashville Railroad Company, Mr. Lee Howell, that the rates were cut down below the rates of the Sun, materially?
Mr. Sumpter: Oh yes.
Mr. Thomas: Both by river and by rail?
Mr. Sumpter: Especially by river.
Mr. Thomas: But both?
Mr. Sumpter: Cut both ways, yes, sir.
Examiner Boyle: When you speak of Mr. Howell as being the owner of these boats and refer to him as the General Freight Agent of the L. & N., do you not use that title by way of identification, or mean that he held it in his official capacity and ran it for the L. & N. Railroad?
Mr. Thomas: I think they are both identical. I can change the term.
Examiner Boyle: No, I merely wanted to know whether he owned them personally?
Mr. Thomas: No, sir, that was probably a mistake in my question. He is the President of the Company who owns them.
Mr. Colston: It appears from testimony that has been taken before the Commissioner in another case involving Bowling Green rates that the Louisville & Nashville Railroad Company has no financial interest in the boat line. That is the case of the Gallatin sugar rate—the Payne-Gardner case.
Mr. Goodwyn: I can give it to you before you get away.
Mr. Thomas: We are not parties to that suit and not bound by what is contained in it. Whatever the interest may have been in the boat lines, the fact is that the freight rates were cut all to pieces?
Mr. Sumpter: Yes, sir, until the Sun was put out of business.
Mr. Thomas: And the temptation to the merchants of Bowling Green became too strong, did it not, to ship at the lower freight rates offered, and they failed to give the Sun the support that it anticipated it would receive, and the Sun had to quit?
261
Mr. Sumpter: Yes, sir.

Mr. Thomas: Now, after the Sun went out, what was the effect on freight rates?

Mr. Sumpter: Well, they were some higher; in fact, we had an agreed rate, to maintain the rates that we had in operation with the Steamer Sun, and in many instances those rates are in yet.

Mr. Thomas: And others?

Mr. Sumpter: Others have been changed.

Mr. Thomas: But the general freight rates for Bowling Green are higher?

Mr. Sumpter: Yes, sir, higher than they were then.

Mr. Thomas: That is, I mean the rates charged, I don't mean those published, but the rates charged?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Since the Sun ceased to operate on the river, has there been any other regular packet carrying freight and passengers, been operating in the river?

Mr. Sumpter: Other than the Evansville & Bowling Green Packet Company, you mean?

Mr. Thomas: Yes, other than that?

Mr. Sumpter: Well, only a small boat *frim* from Morgantown to Bowling Green, that is a gasoline boat.

Mr. Thomas: That is a mail boat?

Mr. Sumpter: Yes, sir.

Mr. Thomas: But no other boat competing in the freight line?

Mr. Sumpter: No, sir.

Mr. Thomas: In the river?

Mr. Sumpter: Yes, sir, in the river.

Examiner Boyle: What comes over that city wharf?

Mr. Sumpter: These mail boats land there daily, and sporadic cases of rough stuff; if a farmer wants a load of brick to build a chimney, or things of that sort.

Mr. Thomas: This mail boat lands at the city wharf regularly?

Mr. Sumpter: Yes, sir.

Mr. Thomas: No other boats ply between the Ohio River and Bowling Green except the boats of the Evansville & Bowling Green Packet Company?

Mr. Sumpter: No, sir.

Mr. Thomas: Carrying freight and passengers?

Mr. Sumpter: No, sir.

Mr. Thomas: The Commissioner asked what is used at the city wharf. This daily boat lands there?

Mr. Sumpter: The daily boat lands there, and barges; in fact, it is open for any purpose, any boat that wants to land there; of course, Mr. Howell, having his private wharf, he would not use it.

Examiner Boyle: Is any wharfage charged by the city?

262 Mr. Thomas: No, sir, it is a free wharf—open landing—no charge of any sort.

Mr. Sumpter: I had quite a communication in regard to getting other packets in here, and one of their great contentions was, You have no place to land; the wharf is controlled by the Evansville &

Bowling Green Packet Company, and we can't land there. And it was on account of that cry that we got busy in the interest of the county and city in buying and maintaining this perpetual free wharf.

Examiner Boyle: Did you take it up again with these same interests that said they couldn't come in?

Mr. Sumpter: This purchase of the wharf is only a recent thing, just at the close of the last City administration, and that administration passed out and another went in; and we are just waiting now until the business gets settled down so we can take the matter up again.

Examiner Boyle: And you contemplate taking it up again?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Also, the plan is on foot to greatly improve the present wharf that you purchased?

Mr. Sumpter: Yes, sir.

Mr. Thomas: And have the City macadamize it?

Mr. Sumpter: Yes, sir, and put up a public wharf building there, if necessary.

Examiner Boyle: Have you any warehouse on that wharf?

Mr. Sumpter: No, sir.

Mr. Thomas: Was or not the road just completed there last year?

Mr. Sumpter: Yes, sir, just completed.

Mr. Thomas: Is Clarksville, Tennessee, on any river?

Mr. Sumpter: Yes, sir.

Mr. Thomas: What river?

Mr. Sumpter: It is on the Cumberland.

Mr. Thomas: Is Nashville, Tennessee. on any river?

Mr. Sumpter: Yes, sir.

Mr. Thomas: What river?

Mr. Sumpter: The Cumberland.

Mr. Thomas: Isn't it above Clarksville on the Cumberland—up the river?

Mr. Sumpter: Yes, sir, up the river.

Mr. Thomas: The Cumberland River empties into the Ohio?

Mr. Sumpter: Yes, sir.

Mr. Thomas: How does the navigation, from the investigation that you have made of the Cumberland River between Clarksville and the Ohio River, compare with the navigation between Bowling Green and the Ohio River as to its continuity?

Mr. Sumpter: Well, just taking the Government report, and, in fact, the information that I gained from that, we have a stream navigable all the year, and they have, I think, about six and a fraction months.

Mr. Thomas: Both Nashville and Clarksville?

Mr. Sumpter: Yes, sir.

263 Mr. Thomas: For about six and a fraction months?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Navigation by water?

Mr. Sumpter: Yes, sir.

Mr. Thomas: And we have continuous?

Mr. Sumpter: We have continuous, yes; of course, I am not prepared to answer exactly.

Mr. Thomas: Well, I have the reports here.

Examiner Boyle: Any locks on the Cumberland River?

Mr. Thomas: Yes, sir.

Examiner Boyle: Locked and dam-ed to the Ohio River?

Mr. Thomas: Just one below Nashville, I think. They have but one lock below Nashville and that is just completed, is it not?

Mr. Sumpter: Yes, sir, I think so.

Mr. Thomas: Have you ever been to Clarksville, Tennessee?

Mr. Sumpter: Yes, sir.

Mr. Thomas: And Nashville, Tennessee?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Considering the country surrounding Clarksville, Tennessee and contiguous to it, and the country surrounding Bowling Green, Kentucky; taking into consideration, that consideration, the mineral wealth, the agricultural character of the country, the possible development of stone, asphalt, coal and other products; taking into consideration the whole surroundings of Clarksville, Tennessee; taking into consideration its connection by river with the Ohio River; Bowling Green connection by river with the Ohio River: Can there be any reason for Clarksville, Tennessee, having lower freight rates, inbound or outbound, than Bowling Green, Kentucky?

Mr. Sumpter: I cannot see any. In fact, I think the reports will show that we furnish a greater tonnage of freight and a greater agricultural country.

Mr. Thomas: Now, Nashville, Tennessee, is larger in population than either of those two cities, but as to the country surrounding, as to the facilities for shipping, as to the influence of the Ohio River upon rates on account of the navigable water, is there any reason why Nashville, Tennessee, should have less freight rates, inbound or outbound, than Bowling Green, Kentucky?

Mr. Sumpter: I cannot see any.

Mr. Thomas: Considering the surroundings of those two towns, comparing them with Bowling Green, would you or not consider it to the undue prejudice and disadvantage of Bowling Green, Kentucky, an unreasonable prejudice and disadvantage, that shipments of freight originating in the East, and passing over the L. & N. Railroad by Bowling Green, Kentucky, to Nashville, Tennessee, and over the Memphis Branch of the same railroad to Clarksville, Tennessee, freight carried for a longer haul over a shorter, and the shorter included within the longer, and all in the same direction, should be carried at materially less rates and charges, for both Clarksville and Nashville, than for Bowling Green, Kentucky?

264 Mr. Sumpter: No, sir.

Mr. Thomas: What efforts have been made to develop the jobbing trade in Bowling Green, and what has been the cause of the failure?

Mr. Sumpter: Well, we have a fine field, we have a fine territory here, a good center for jobbing business, but we are handicapped in the shape of freight rates as compared with Clarksville—I use

Clarksville as especially. We are confined here in a very small trade zone. In one instance the wholesale grocery merchant could not sell his brother sugar—right down here at South Union.

Mr. Thomas: How far below Bowling Green?

Mr. Sumpter: Only about twelve or fourteen miles. He could not sell against Evansville; and we have now a sugar rate that is better than the old rate.

Mr. Thomas: Gotten through the agitation of this club?

Mr. Sumpter: Of this club, yes, sir.

Mr. Thomas: You say that a merchant in Bowling Green, until the granting of this new rate——

Mr. Sumpter: Well we can't sell sugar in Bowling Green; he couldn't sell it in his own town.

Mr. Thomas: At the old rate which stood for many years, he could not sell to his own brother at South Union, Kentucky, fourteen miles below here?

Mr. Sumpter: Yes, sir.

Mr. Thomas: To meet the competition of these other places?

Mr. Sumpter: No, sir, he could not.

Mr. Thomas: Of Nashville or Clarksville, if he wanted to sell it?

Mr. Sumpter: No, sir.

Examiner Boyle: Who did sell sugar in Bowling Green?

Mr. Sumpter: Evansville and Nashville.

Examiner Boyle: You mean, they paid the rates to those points and then shipped locally here?

Mr. Sumpter: Yes, sir, they had through rates from New Orleans.

Mr. Thomas: You get your sugar from New Orleans, too, don't you?

Mr. Sumpter: Yes, sir.

Mr. Thomas: And they could ship it up there and local it back here, straight rate, better than you could?

Mr. Sumpter: Yes, sir, we have a better rate now. Mr. Graham, the sugar man, can tell you all about the sugar—will in due time.

Mr. Thomas: Wasn't the factor that produced that lower rate on sugar that at certain seasons, when there was a great deal of sugar in the East, sugar could be bought and brought to Evansville and bring it that way in large quantities; wasn't that one of the factors that produced the lower rate when the thing was fought out?

Mr. Sumpter: Yes, sir.

Mr. Thomas: River transportation entered as an element, then, in reducing that rate?

Mr. Sumpter: Yes, sir.

Mr. Thomas: In other words, we have got several grocery houses jobbing here, haven't we?

Mr. Sumpter: Yes, sir.

265 Mr. Thomas: And you also have tried to job in your line of business?

Mr. Sumpter: Yes, sir.

Mr. Thomas: You are on a purely local rate here in Bowling Green, as I understand it?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Bowling Green is of no more importance in the freight rate world as a receiving and shipping point than the smallest flag station on the main line of the L. & N. Railroad?

Mr. Sumpter: It seems that way.

Mr. Thomas: In other words, you get on from the East or Louisville rate, plus the local rate to Bowling Green, and likewise from Evansville and other points you have got to add the local rate on to get here?

Mr. Sumpter: Yes, sir.

Mr. Thomas: When you leave Bowling Green, to ship out the goods that you have purchased at these high rates of freight traffic, to get these high rates of freight traffic, you are also met outgoing with the same local rate situation which handicaps you, going in every direction?

Mr. Sumpter: Yes, sir, equally as high or higher than our incoming rate. Of course, our incoming rate is a little better than the outgoing sometimes.

Mr. Thomas: But that is only a commodity matter?

Mr. Sumpter: Yes, sir, to us.

Mr. Thomas: But as to the matter of classes and general freight rates, that is the situation?

Mr. Sumpter: Yes, sir.

Mr. Thomas: How do you get to Evansville by railroad from here, the most direct route?

Mr. Sumpter: By way of Guthrie.

Mr. Thomas: Go to Guthrie on the Louisville & Nashville Railroad?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Then on the Louisville & Nashville to Evansville, Indiana?

Mr. Sumpter: Yes, sir.

Mr. Thomas: In Bowling Green, does the Louisville & Nashville Railroad Company have a freight agent?

Mr. Sumpter: Yes, sir.

Mr. Thomas: You have been in the jobbing business here a number of years; did you ever know of the freight agent at Bowling Green soliciting freight for shipment over the railroad between Evansville and Bowling Green?

Mr. Sumpter: No, sir; we can't get it out any other way.

Mr. Thomas: As against the river?

Mr. Sumpter: No, sir.

Mr. Thomas: Have you ever known him to solicit any at all?

Mr. Sumpter: Never known him to solicit any at all.

Mr. Thomas: Did you ever visit Louisville as a committee of this club and have a conference with the officials of the railroad looking to better freight rates for Bowling Green?

266 Mr. Sumpter: Yes, sir.

Mr. Thomas: In that conference was or not the situation of freight rates in Bowling Green treated by those officials as being entirely within the hands of the L. & N. Railroad.

Mr. Sumpter: As to making rates?

Mr. Thomas: As to making rates, yes?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Was Captain Howell, or any one representing his boat line, called in conference in regard to the matter?

Mr. Sumpter: No, sir.

Mr. Thomas: Were you present when the rate question was heard before the State Commission at Frankfort, when Judge Lindsey and Colonel Bennett Young represented the State and the Commission made an order reducing the rates on the L. & N. twenty-five per cent., horizontal reduction?

Mr. Sumpter: Twenty-five per cent, yes, sir.

Mr. Thomas: You heard that question?

Mr. Sumpter: Yes, sir.

Mr. Thomas: You were there representing this same business men's club that has been fighting for better freight rates for Bowling Green?

Mr. Sumpter: Yes, sir.

Mr. Thomas: This same element of injustice and discrimination and disadvantage, as against Bowling Green and in favor of Clarksville and Nashville, was suggested there, and you all had given testimony about it?

Mr. Sumpter: Yes sir, and brief has been filed.

Mr. Thomas: And the point made that that was interstate and not intrastate, and that our Commission could not treat with that. I will ask you if the attorney for the L. & N. Railroad maintained that on that occasion?

Mr. Sumpter: Yes, sir, he asked that it be heard separate, and that it not be treated as a part of that case at all, as it was a separate case.

Mr. Thomas: And not be treated as a part of that general case?

Mr. Sumpter: Not be treated as part of that general case.

Mr. Thomas: Have you the evidence that was offered in Bowling Green by the business men before the Commission during that hearing?

Mr. Sumpter: No, sir. We had all of the copy, and in the fire that burned our office out and equipment, just across the street, we had everything destroyed by fire; and we have none of it at all.

Mr. Thomas: When was that fire that destroyed that building?

Mr. Sumpter: That was on the morning of the 5th of July last.

Mr. Thomas: Have you made any effort to get the original from Frankfort?

Mr. Sumpter: Yes, sir, but they failed to find it.

Mr. Thomas: Search was made for it?

Mr. Sumpter: Search was made for it and it could not be found.

Mr. Thomas: What is the common knowledge, report or
267 understanding in Bowling Green as to the control of the river by the Louisville & Nashville Railroad Company?

Mr. Sumpter: Do you mean what do the citizenship of Bowling Green—who they think owns it and controls it?

Mr. Thomas: Yes, sir?

Mr. Sumpter: The L. & N. Railroad Company.

Mr. Thomas: How long have they been of that opinion?

Mr. Sumpter: Ever since they bought this packet line and after the Government took possession and freed the river and kept up and maintained the locks and made it easy sailing for somebody to go in; that is the general opinion of the public here—that was your question?

Mr. Thomas: I said common report?

Mr. Sumpter: Yes, sir.

Examiner Boyle: Do you concur in that opinion?

Mr. Sumpter: Yes, sir.

Mr. Thomas: And one thing that sinks in and gets firmly fixed in the mind of the community—that is what a common report is. Have we or not at the present a number of extensive quarries being opened in the vicinity of Bowling Green, furnishing a very fine quality of stone, which are capable of development under a proper rate condition?

Mr. Sumpter: Yes, sir; no question about that.

Mr. Thomas: Are there not within easy reach of Bowling Green coal fields that are capable of development under proper conditions?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Formerly did not nearly all the coal used in the old river navigation business come by river?

Mr. Sumpter: Practically all of it.

Mr. Thomas: Now do we get any of it?

Mr. Sumpter: No, sir.

Mr. Thomas: Within easy access, within easy reach and access of Bowling Green, are there not fields of asphalt?

Mr. Sumpter: Yes, sir.

Mr. Thomas: Which efforts are being made to develop, which could be developed if Bowling Green was made a competitive point and a basing point for rates, as she is entitled to be, considering transportation of freight by river?

Mr. Sumpter: Yes, sir; no doubt about that.

Mr. Thomas: Is there or not already an asphalt plant here?

Mr. Sumpter: Yes, sir.

Mr. Thomas: For bringing the asphalt some forty miles by river and making this the distributing point?

Mr. Sumpter: Yes, sir; we have an elevator right down between the two wharves,—two landings.

Mr. Thomas: Could not these jobbing houses that are now in Bowling Green, that is, in the territory extending in all directions, be made successes if Bowling Green could be put upon a competitive basis?

Mr. Sumpter: Yes, sir—give us the rates of Nashville or Clarksville, either.

268 Mr. Thomas: As it is, with merely local rates ingoing, and outgoing local rates at which to buy our produce to sell as she has to buy them, and local rates to get them out after she undertakes to distribute them, is it possible for any development to any great extent to be made?

Mr. Sumpter: No, sir, it seems not.

Cross-examination:

Mr. Colston: Mr. Sumpter, you have testified to some extent about the effect of Barren River on rates to Bowling Green, and the effect of the Cumberland River on the rates to Clarksville and Nashville; do you know when the rates to Nashville were first made lower than the rates to Bowling Green?

Mr. Sumpter: No, I do not.

Mr. Colston: From Louisville?

Mr. Sumpter: No, sir.

Mr. Colston: You don't know anything about that, do you?

Mr. Sumpter: No, sir.

Mr. Colston: You don't know anything about the reasons which actuated them?

Mr. Sumpter: Yes, sir, it was on account of the steamboats operating on the Cumberland River.

Mr. Colston: How do you know that?

Mr. Sumpter: Well, I have the report on it. I am not exactly conversant on that point right now, but I have heard the reasons.

Mr. Colston: What kind of a report is that that you got that from?

Mr. Sumpter: Well, the river report.

Mr. Colston: What river report?

Mr. Sumpter: The business down on the Cumberland River; I don't know exactly about the river conditions.

Mr. Colston: Isn't it a fact that you don't know anything about the conditions which first led to granting Nashville lower rates than Bowling Green from Louisville?

Mr. Sumpter: Lower rates from Bowling Green?

Mr. Colston: No. Isn't it a fact that you don't know anything about the conditions which led to granting Nashville lower rates from Louisville than applied from Louisville to Bowling Green?

Mr. Sumpter: No, sir, I don't know exactly the conditions, but we can give you all that you want.

Mr. Colston: I want to find your knowledge; I am testing your knowledge now.

Mr. Sumpter: I couldn't give you exactly in detail.

Mr. Colston: You have given some expert traffic testimony here.

Mr. Thomas: I can give you the increase in the rates.

Mr. Sumpter: I can give you the cause but as to giving you in detail——

Mr. Colston: Your description of the facilities afforded by the Green and Barren river- were geographical merely, and not those of an expert traffic man?

269 Mr. Sumpter: No, not those of an expert traffic man; certainly not; I do not profess to be.

Mr. Colston: Do you know how much of the freight received at Bowling Green now reaches here by river?

Mr. Sumpter: No, sir.

Mr. Colston: Do you know how much of the freight which reached Bowling Green just after the completion of the Louisville & Nashville line from Bowling Green to Louisville reached here by river?

Mr. Sumpter: No, sir.

Mr. Colston: Do you know — Mr. Lee Howell has any jurisdiction over rates from Louisville to Bowling Green or over the main line rates?

Mr. Sumpter: No, sir, I have no personal knowledge of his having.

Mr. Colston: Is it your opinion that he has?

Mr. Sumpter: Well, it is my opinion that they worked together; that is just merely my opinion, and as I stated, the general opinion of the public here, of the people of Bowling Green, was that.

Mr. Colston: That is not what I asked. You referred to Mr. Lee Howell as the General Freight Agent of the Louisville & Nashville Railroad Company; now, as General Freight Agent of the Louisville & Nashville Railroad Company, does he have any jurisdiction of the freights from Louisville to Bowling Green?

Mr. Sumpter: Over the boats, you mean?

Mr. Colston: Freight rates from Louisville to Bowling Green as an official of the Louisville & Nashville Railroad Company?

Mr. Sumpter: Well, I don't know that he does over the regulation of rates over the L. & N.; I don't know exactly that he is connected with that.

Mr. Colston: And you don't know, as a matter of fact, whether Lee Howell has anything to do with the making of rates between any points on the L. & N.?

Mr. Sumpter: No, sir, no further than his connection with the L. & N. as General Freight Agent; but to personally say I know, would be a different question.

Mr. Colston: You know that Mr. D. M. Goodwyn is General Freight Agent of the Louisville & Nashville Railroad Company, do you not?

Mr. Sumpter: Yes, sir, I have had several conferences with him.

Mr. Colston: You stated that you did not see any reason why Clarksville should have lower rates than Bowling Green?

Mr. Sumpter: Yes, sir.

Mr. Colston: Do you know how the trade to Clarksville was first carried to and from Clarksville?

Mr. Sumpter: The river business I did, but I could not give it to you in detail. We have a man here that can.

Mr. Colston: Do you know how it was first carried? Was it carried principally by rail or by river?

Mr. Sumpter: No, sir, I don't know.

Mr. Colston: Do you know where the industries at Clarksville, the warehouses, etc., were first located?

Mr. Sumpter: No, sir, I don't know.

270 Mr. Colston: Were they first located on the river or on the railroad?

Mr. Sumpter: I know very little about the City of Clarksville.

Mr. Colston: There are no private storehouse buildings and merchants located along the river at Bowling Green, are there?

Mr. Sumpter: No, sir.

Mr. Colston: When were there?

Mr. Sumpter: Well, there was during the old navigation company, they had a big store warehouse down at the river.

Mr. Colston: Whose warehouse was that?

Mr. Sumpter: The Green River Navigation Company.

Mr. Colston: It was not the warehouse of the merchants, was it?

Mr. Sumpter: Yes, they were merchants, running a big store and a big supply house. The fact of the business is, during that time—if you will permit it—the old Green River Navigation Company used to have her ways here, that she would jack her boats up on and repair it clear through.

Mr. Colston: But this warehouse was the warehouse of the navigation company?

Mr. Sumpter: Yes, sir, a big warehouse on the river.

Mr. Colston: That is, in those days wasn't there a business community up in Bowling Green as there is now?

Mr. Sumpter: Yes, sir.

Mr. Colston: The business community of Bowling Green is located how far from the river?

Mr. Sumpter: About a mile, from the Public Square to the wharf.

Mr. Colston: The business development, the business center of Bowling Green has always been around in the neighborhood of the Public Square, and not on the river, has it not?

Mr. Sumpter: Yes, sir.

Mr. Colston: Do you know under what conditions Nashville first grew up as a distributing market?

Mr. Sumpter: No, sir.

Mr. Colston: You don't know whether it was the railroad or the river that made Nashville?

Mr. Sumpter: No, sir, I do not.

Mr. Colston: Before the L. & N. was built to Bowling Green, was there any great amount of freight shipped in here and distributed by river?

Mr. Sumpter: That is a little further back than I can go.

Mr. Thomas: It was the biggest tobacco market in the world—please put that in the record—before the railroad was built.

Mr. Colston: Do you know whether or not Nashville was the grain market for the West, for distribution to the Southeast, before the railroad ever went there?

Mr. Sumpter: No, sir, I do not.

Mr. Colston: Do you know whether Bowling Green had any such freight before the railroad reached here?

Mr. Sumpter: No, I don't know anything about that time, before the railroad was built; that was before I was here; I haven't
271 had occasion to go back that far.

Mr. Colston: Now, going back to the discontinuance of the service furnished by the river steamer Sun—which, I believe you stated, was owned by the merchants of Bowling Green?

Mr. Sumpter: Yes, sir, practically.

Mr. Colston: Under what agreement was that service discontinued by the merchants of Bowling Green?

Mr. Sumpter: Under what agreement?

Mr. Colston: Yes, sir?

Mr. Sumpter: It was not under any agreement at all.

Mr. Colston: I thought you said there was an agreement.

Mr. Sumpter: No, sir, I said that the present packet company agreed to let the rates that applied to the Steamer Sun continue, and we enjoyed those rates for quite a while.

Mr. Colston: What was the consideration for that agreement on the part of the packet company?

Mr. Sumpter: None whatever. We just simply adopted the rates.

Mr. Colston: Had nothing to do with the withdrawal of the packet Sun at all?

Mr. Sumpter: No.

Mr. Colston: The Evansville & Bowling Green Packet Company, then, without any consideration whatever, made an agreement with you to maintain rates not above a certain maximum?

Mr. Sumpter: No, they didn't make any agreement with the business men any further than they just simply used those rates. There was no agreement at all any further than just that.

Mr. Colston: I thought I understood you to say that you had an agreement.

Mr. Sumpter: No, sir, that they agreed to let those rates, or did let the same old rate become operative.

Mr. Colston: Now, just what kind of an agreement was that? That is what I want to know.

Mr. Sumpter: There wasn't any at all that I know of. If there was, I wasn't a party to it.

Examiner Boyle: What do you mean by the same old rate?

Mr. Sumpter: The rate that the merchants were paying the steamer Sun. You see, during the time they cut the rates, the rates were cut all to pieces, in order to put the competition boat out of existence.

Examiner Boyle: The packet company cut the rates established by the Sun?

Mr. Sumpter: Yes, sir, but they restored the Sun rates after the Sun went out.

Examiner Boyle: What rates did the packet company have before the establishment of the Sun? How far were they reduced by the Sun when it started?

Mr. Sumpter: They were reduced materially. I couldn't tell you exactly. I could get that information and give you the figures, but I wouldn't guess at the figures.

Examiner Boyle: While we are on this point—If you will pardon me?

272 Mr. Colston: All right.

Examiner Boyle: When the Sun first started to do business as a schedule of rates, what did it do? Did it take the rates charged by the packet company, or cut those?

Mr. Sumpter: Did it charge lower than the packet had been charging? Yes, sir.

Examiner Boyle: Then the packet cut down below the Sun?

Mr. Sumpter: Yes, sir.

Mr. Colston: Your information in regard to the transaction is merely hearsay or general report, isn't it?

Mr. Sumpter: Yes, sir.

Mr. Colston: No agreement.

Mr. Sumpter: No agreement with the packet company, that I have had anything to do with.

Mr. Colston: Now, taking by comparison; with the Green and the Barren Rivers on the one side and the Cumberland River on the other; are there any railroad points at which the railroad crosses the Green and Barren Rivers, besides Bowling Green?

Mr. Sumpter: No, sir, none that I know of.

Mr. Colston: There are no other places?

Mr. Sumpter: No, sir, that it crosses the Green and Barren Rivers south except Bowling Green—Yes, it crosses Green River and Barren, too.

Mr. Colston: Are there any other places at which the railroads cross Green and Barren Rivers besides Bowling Green?

Mr. Sumpter: Yes, sir, it passes Green River above here.

Mr. Colston: The Louisville & Nashville Railroad Company crosses Green River at Livermore, doesn't it?

Mr. Sumpter: Yes, sir, I think so.

Mr. Colston: And the river is navigable at Livermore, isn't it?

Mr. Sumpter: Yes, sir, I guess so.

Mr. Colston: Does Livermore enjoy any special advantage or rates on account of its location on the Barren River or on the Green River?

Mr. Sumpter: I couldn't tell you.

Mr. Colston: The Illinois Central passes or crosses Green River at Rockport, doesn't it?

Mr. Sumpter: I think so, yes, sir.

Mr. Colston: Does Rockport enjoy any advantages of rates on account of its location on the Green River?

Mr. Sumpter: I should say it does, I don't know.

Mr. Colston: You don't know anything about it?

Mr. Sumpter: No, sir; I couldn't tell you; I don't know anything about it.

Mr. Colston: So far as you know, there is not a single crossing of the Green or Barren River which enjoys any advantages of rates by reason of its location on those rivers, isn't that true?

Mr. Sumpter: I don't know about that.

Mr. Colston: Except such advantage as may be granted to Bowling Green by the Louisville & Nashville Railroad Company?

Mr. Sumpter: I don't know whether that is true or not.

273 Mr. Colston: Except for the advantage of its location on the Barren River, there is no reason why Bowling Green should have any lower rates than a flag station?

Mr. Sumpter: Yes, I think the tonnage of the business, or trade that she does, and the geographical point or distance between the two cities, Louisville and Nashville.

Mr. Colston: And upon that understanding, you made this complaint?

Mr. Sumpter: No, from the general conditions.

Mr. Colston: You had that understanding when you made this complaint. What was the understanding outside of the Barren River?

Mr. Sumpter: Why, general discrimination as set forth in that complaint.

Mr. Colston: I would like to find what your understanding was. I have taken up the question of the location of the Barren River as the ground under which you claim that circumstances are similar here to what they are at Clarksville and Nashville. Now, I asked you if there is any reason beyond that. You said there was. You said that the tonnage had something to do with it. Now, I say, those matters are the reasons on which you based your complaint, is that true?

Mr. Sumpter: Well, all of those enter into the bases of the reasons of the complaint, of course.

Mr. Colston: Those are all that you can think of now, aren't they?

Mr. Sumpter: Yes, sir.

Mr. Colston: When you went to Louisville with this committee, what rate did you go to investigate?

Mr. Sumpter: Well, we asked for quite a number of general reductions in rates.

Mr. Colston: From what points?

Mr. Sumpter: Well, from various points, coming into Bowling Green.

Mr. Colston: Did you say anything about Evansville to Bowling Green rates?

Mr. Sumpter: Yes, sir, what the rates ought to be.

Mr. Colston: Are you sure of that?

Mr. Sumpter: Yes, sir.

Mr. Colston: You asked the reduction in the Evansville and Bowling Green rates?

Mr. Sumpter: No, sir, we talked about Evansville and Bowling Green rates, and other through rates.

Mr. Colston: Did you ask for any reduction in the Evansville and Bowling Green rates?

Mr. Sumpter: I couldn't tell you now; I don't remember what rates we did ask.

Mr. Colston: Isn't it a fact that the only rates you asked any reduction on were the rates on the Ohio River from Louisville to Bowling Green via the L. & N.?

274 Mr. Sumpter: At different times, I think, we took up the general bases; I don't know.

Mr. Colston: The Cincinnati through rates?

Mr. Sumpter: I don't remember just what we did take up.

Mr. Colston: What you have testified as to the ownership of the packet line is merely hearsay with you, isn't it?

Mr. Sumpter: Yes, sir; I said it was the general impression of the people here in my statement, that I knew that he did, or that they owned it.

Mr. Colston: In your business you don't handle any of this coal or stone or asphalt that you are testifying about, do you?

Mr. Sumpter: No, sir.

Mr. Goodwyn: Mr. Sumpter, you testified to the wharfage facilities that had been established or provided at the river landing here on Barren River, owned, I believe you said, by the city and by the county?

Mr. Sumpter: Yes, sir, the new one purchased.

Mr. Goodwyn: What has the wharf down here to do with the rates charged by the Evansville & Bowling Green Packet Company to Louisville?

Mr. Sumpter: Well, I will have to get you to answer that question.

Mr. Thomas: No, you can answer that yourself.

Mr. Goodwyn: Answer what has it to do. Do not the rates of the Bowling Green & Evansville Packet Company cover delivery in your city at the store door?

Mr. Sumpter: Yes, sir.

Mr. Goodwyn: Then, what has the wharf to do with that?

Mr. Thomas: He wants to know what the wharf has to do with the situation.

Mr. Goodwyn: If you will pardon me, I am asking.

Mr. Thomas: I beg your pardon. I knew that you didn't understand the witness or the witness didn't understand you.

Mr. Goodwyn: What has the wharf to do with the rates of the Bowling Green and Evansville Packet Company to Bowling Green?

Mr. Sumpter: What I meant was that, having a wharf owned by the packet company, it absolutely shut out any others except by permission that we wanted to let them in.

Mr. Goodwyn: I will put my question in a different way: Don't the rates of the Bowling Green & Evansville Packet Company cover delivery to the store door in Bowling Green?

Mr. Sumpter: Yes, sir.

Mr. Goodwyn: In other words, they cover whatever wharfage expense may be incurred by the maintenance of its own private wharf there, and cover the cost of drayage, or any other means of transfer from that wharf up to your door, isn't that a fact?

Mr. Sumpter: Yes, sir.

Mr. Goodwyn: When was the steamer Sun established?

Mr. Sumpter: I have forgot now exactly what year it was.

275 Mr. Goodwyn: You say it was owned by the merchants of Bowling Green?

Mr. Sumpter: Yes, sir.

Mr. Goodwyn: Were you one of the merchants that owned part of it?

Mr. Sumpter: Yes, sir, I had a little in it.

Mr. Goodwyn: You say when the steamer Sun was established that it was owned by the citizens of Bowling Green, and you had some stock in it, made lower rates than had been previously maintained by the other boat lines in the river?

Mr. Sumpter: Yes, sir.

Mr. Goodwyn: You say that the other boat line then either met or went lower?

Mr. Sumpter: Yes, sir.

Mr. Goodwyn: And that the Sun then did what, please?

Mr. Sumpter: Went down.

Mr. Goodwyn: Went down below the rates that had been established?

Mr. Sumpter: No, sir. The Sun went out of business.

Mr. Goodwyn: Went out of business at the first dash out of the box?—If you will pardon the slang expression.

Mr. Sumpter: Well, it ran a while.

Mr. Goodwyn: When did the Sun discontinue her operations?

Mr. Sumpter: I don't remember exactly the year.

Mr. Goodwyn: Was it in 1901?

Mr. Sumpter: I don't know.

Mr. Goodwyn: Can't I refresh your memory a little about that?

Mr. Sumpter: It was before my day, I don't know.

Examiner Boyle: Do you know, Mr. Goodwyn?

Mr. Goodwyn: It was only in operation a comparatively short time.

Mr. Thomas: It ran about a year, about twelve months, is my recollection.

Mr. Goodwyn: Who is Mr. Greer?

Mr. Sumpter: He is one of the merchants here in Bowling Green.

Mr. Goodwyn: Was he one of those that owned part of the steamer Sun?

Mr. Sumpter: Yes, sir.

Mr. Goodwyn: Just about the time when the Sun went down, did that cooperative association that owned that boat, through Mr. Greer, make an agreement with the Evansville and Bowling Green Packet Company?

Mr. Sumpter: Well, we will have Mr. Greer on the stand.

Mr. Goodwyn: I am asking you.

Mr. Sumpter: I couldn't tell you.

Mr. Goodwyn: You know nothing at all about that agreement?

Mr. Sumpter: No, sir.

Mr. Goodwyn: You said you were given the benefit of the rates first established by the Sun for some time after the Sun discontinued operations; do you know for how long?

Mr. Sumpter: No, sir, I do not.

276 Mr. Goodwyn: Do you know that those lower rates that were made by the Evansville & Bowling Green Packet Company in 1901 are in effect by the Evansville & Bowling Green Packet Company today?

Mr. Sumpter: Most of them are.

Mr. Goodwyn: The same, or lower?

Mr. Sumpter: No, sir, not lower. Some of the rates have been raised.

Mr. Goodwyn: What rates?

Mr. Sumpter: I couldn't tell you exactly, but I have some.

Mr. Goodwyn: Which ones?

Mr. Sumpter: I don't know; I could tell you by going to my files.
Mr. Goodwyn: Do you get any business from Evansville?
Mr. Sumpter: Get some through Evansville.
Mr. Goodwyn: Do you bring it from there by boats?
Mr. Sumpter: Yes, sir, some of it.
Mr. Goodwyn: Have any of your rates been raised?
Mr. Sumpter: Yes, sir, as I say, I think there is some changes, yes, sir.
Mr. Goodwyn: You think; you said, in response to a question that was asked you that you had gotten a reduction in the rate on sugar, I believe?
Mr. Sumpter: Yes, sir.
Mr. Goodwyn: What is your present rate on sugar from New Orleans here?
Mr. Sumpter: Mr. Graham, what is it?
Mr. Goodwyn: Twenty cents, isn't it?
Mr. Sumpter: Yes, sir.
Mr. Goodwyn: What was the rate before that—twenty-five you said?
Mr. Sumpter: Yes, sir.
Mr. Goodwyn: You said that on a twenty-five cent rate from Evansville to Bowling Green he could not sell sugar in his own town?
Mr. Sumpter: It wasn't a twenty-five cent rate then.
Mr. Goodwyn: Oh, you were not talking about a rate that was in effect immediately previous to the twenty cent rate; you were talking about some other rate?
Mr. Sumpter: Yes, sir, talking about the rate before that, the rate we were talking about when Bowling Green couldn't do business.
Mr. Goodwyn: You don't know what rate you were talking about then?
Mr. Sumpter: Yes, sir, I knew what I was talking about.
Mr. Goodwyn: What rate was it?
Mr. Sumpter: Thirty-five from New Orleans to Bowling Green.
Mr. Goodwyn: And the Evansville merchant could not do business in his own town.
Mr. Sumpter: I meant the Bowling Green merchant.
Mr. Goodwyn: The Bowling Green merchant couldn't do business in his own town?
277 Mr. Sumpter: He could not and meet the competition.
Mr. Goodwyn: Couldn't he buy sugar in Evansville?
Mr. Sumpter: No, sir, the jobber couldn't buy it from Evansville.
Mr. Goodwyn: Couldn't buy it?
Mr. Sumpter: No, sir, he isn't in the market for it.
Mr. Goodwyn: Couldn't you buy sugar there?
Mr. Sumpter: No, sir; Griffin & Jenkins, wholesale merchants here, couldn't buy sugar in Evansville?
Mr. Goodwyn: You said Bowling Green was on a purely local

station basis, the same as any flag station; what is the ground of that statement; what do you call a purely local basis?

Mr. Sumpter: Well, as to this comparison: As compared with Clarksville and Nashville.

Mr. Goodwyn: What is the first station north of Bowling Green?

Mr. Sumpter: Bristow.

Mr. Goodwyn: Has Evansville any better rates than Bristow?

Mr. Sumpter: I couldn't tell you.

Mr. Goodwyn: You don't know?

Mr. Sumpter: No, sir.

Mr. Goodwyn: Then why do you testify that Bowling Green is on the same basis as Bristow?

Mr. Sumpter: I didn't testify that it was on the same basis. Mr. Thomas asked me if it was not practically as a flag-station, and I said it was so, on a local rate.

Mr. Thomas: At a local rate.

Mr. Goodwyn: You don't know, then, whether Bowling Green has a higher or lower rate than Bristow?

Mr. Sumpter: I didn't state that. He asked me the question in a general way.

Mr. Goodwyn: Do you know whether Bowling Green has lower or higher rates than Memphis Junction?

Mr. Thomas: There is a little town below there, named Dennis; you might take that.

Mr. Goodwyn: You seem to think that ought to be the name of this place. You don't know whether there is a higher, the same, or lower rates than Memphis Junction?

Mr. Sumpter: Bowling Green, of course, I know it has enjoyed better rates than Memphis Junction.

Mr. Goodwyn: Then, why do you say it is a local station?

Mr. Sumpter: That was not the question.

Examiner Boyle: I understood Mr. Sumpter to testify regarding the bases of rate-making here, rather than to say anything regarding the rates themselves; that is, that he complained of the system of making rates here on the Louisville or the Louisville combination.

Mr. Goodwyn: That doesn't apply from Louisville to Bristow or from Louisville to Memphis Junction?

Mr. Sumpter: No, sir.

Mr. Connell: Do you have any complaint to make as to the rates north of the Ohio River?

Mr. Sumpter: No, sir.

Mr. Connell: None at all?

278 Mr. Sumpter: No, sir, none that I know of as to that. That is, I couldn't just give you off handed, except as set up in our complaint there.

Mr. Connell: Well, we will take your complaint: The first instance where you show rates from stations north of the Ohio River is on navy beans from Jackson, Michigan. Do you handle any navy beans?

Mr. Sumpter: No, sir.

Mr. Connell: None at all?

Mr. Sumpter: No, sir.

Mr. Connell: Don't know anything about the rates on them?

Mr. Sumpter: No, sir, not a thing about that. We can give you that later. We have a bean man here.

Mr. Connell: Do you expect to put the bean man on the stand?

Mr. Sumpter: Yes, sir.

Mr. Connell: How about wall paper from Worcester, Massachusetts? Do you handle that?

Mr. Sumpter: Yes, sir.

Mr. Connell: Do you know how the rates from Worcester are made up?

Mr. Sumpter: No, sir, I don't know whether they are made up into Louisville or into Evansville. The shipments that I have bought last is from Worcester, we shipped into Evansville, plus the boat rate, and I couldn't tell you what the rate was into Evansville.

Mr. Connell: Plus the boat rate?

Mr. Sumpter: Yes, sir, plus the boat rate into Bowling Green.

Mr. Connell: Was the shipment consigned to Louisville care of the boat line?

Mr. Sumpter: No, sir, it was consigned to Evansville.

Mr. Connell: To Evansville care of the boat line?

Mr. Sumpter: Yes, sir.

Mr. Connell: Then, it was not a through shipment to Bowling Green?

Mr. Sumpter: No, sir, we couldn't get it through to Bowling Green.

Examiner Boyle: Why?

Mr. Sumpter: I don't know.

Mr. Connell: Mr. Sumpter, have you made up the rates shown in the complaint and the combination of the rates into Louisville or Evansville plus the rates applying on the boat line, or the through published rates?

Mr. Sumpter: Through published rates.

Mr. Connell: By rail?

Mr. Sumpter: Yes, sir, by rail, except where otherwise specified. All of these rates that we have compiled in there are class rates, aren't they?

Mr. Thomas: No, sir, there are some commodity rates; they speak for themselves.

Mr. Connell: That is not my question. Are the rates shown in here the published through rates applying by rail, or are they all-rail rates to Louisville and Evansville plus the charge you
279 might pay by the boat line from Evansville to Bowling Green?

Mr. Sumpter: There are no boat rates in there.

Mr. Connell: How are those rates made up?

Mr. Thomas: It is made up this way, it is the rate we get goods in on, but that rate is the rate to Louisville plus the local rate here.

Mr. Connell: What do you call the Louisville rates, the boat line or the rail rate?

Mr. Thomas: The rail rates; there are no boat rates in there,

except where it mentions Louisville partly rail and partly water, they are to Louisville affecting it to Louisville, but no water rates affecting it to Bowling Green independent of affecting it to Nashville.

Mr. Connell: Then, Mr. Sumpter, according to that, your complaint is filed against the rates applying from the Ohio River to Bowling Green, isn't that correct?

Mr. Sumpter: Well, we want—the system of making the rates is incorrect, as we believe, and we want the Commission to decide it for us.

Mr. Connell: Tell us what you mean by the system of making the rates, as it applies to wall paper from Worcester, Massachusetts?

Mr. Sumpter: Well, we ought to be able to have Worcester make us a through rate into Bowling Green.

Mr. Thomas: Make this a basing and competitive point.

Examiner Boyle: When you use the word "through" rate, you mean a joint through rate?

Mr. Thomas: Yes, sir, over different lines. A joint through rate.

Mr. Connell: What kind of a rate would you want from Worcester?

Mr. Sumpter: Well, that part of it I wouldn't be prepared to state here off-handed and state what we ought to have.

Mr. Thomas: That is put in there as part of the general system.

Mr. Connell: This paper shows less carloads on paper from Worcester to Bowling Green, car load 73, less than car load, 1.12; what is it you want?

Mr. Sumpter: A rate equal to that to Clarksville and to Nashville; that would not be discriminating against Bowling Green in favor of other points closely situated. There are some rates in there that you will find very little difference between Clarksville and Bowling Green or Nashville, but very few.

Mr. Connell: Then, as a matter of fact, your main grievance is discrimination south of the Ohio River in favor of Clarksville and Nashville, against Bowling Green?

Mr. Sumpter: That is one of them.

Mr. Connell: You don't know whether you have any complaint against the rates between Worcester, Massachusetts, and the Ohio River?

Mr. Sumpter: No, sir, we do not.

Mr. Connell: They are all right to the Ohio River?

280 Mr. Sumpter: We don't know that we have any complaint at all.

Mr. Thomas: He means that taking that part as making up the rate, that may be all right.

Mr. Graham: The inbound rates are all right, but the outbound rates are not.

Mr. Sumpter: We get it stuck to us somewhere, we don't know where.

Mr. Connell: Do you handle Irish potatoes?

Mr. Sumpter: No, sir, we have a potato man here, and he will be on the stand.

Mr. Connell: Do you handle bi-carbonate of soda?
Mr. Sumpter: No sir.
Mr. Connell: Canned tomatoes?
Mr. Sumpter: He will be on the stand too.
Mr. Connell: Do you handle farm wagons?
Mr. Sumpter: No sir.
Mr. Connell: Are you going to have a farm wagon man on the stand?
Mr. Sumpter: Yes sir.
Mr. Connell: White lead, from where?
Mr. Sumpter: That is Cincinnati.
Mr. Colston: Just one question about the Worcester rate, the paper from Worcester, Massachusetts, can reach Bowling Green, can it not, either by Louisville *of* via Nashville?
Mr. Sumpter: I think so, yes sir.
Mr. Colston: You don't know what effect the situation in that regard the competition between one route and another will have on the rate adjustment, with this place, do you, as compared to Nashville?
Mr. Sumpter: No sir.
Mr. Thomas: He asked you about Memphis Junction; that is not a town, is it?
Mr. Sumpter: No sir.
Mr. Thomas: Is there but one house at Memphis Junction, and that belongs to the railroad company?
Mr. Goodwyn: That belongs to the railroad company.
Mr. Thomas: Where the telegraph agent and the railroad agent stays?
Mr. Sumpter: Yes sir, I only referred to that because I thought Mr. Colston referred to it as a joke.
Mr. Colston: No sir, I referred to it because Mr. Thomas referred to that flag station.
Mr. Thomas: I say those little stations are made up on the same way as ours, except in some instances where you have been hammered down, in a few instances for the Bowling Green, that is my point. Mr. Colston asked you about Rockport & Livermore; are they not the smallest little villages, with a few houses, on the Green River?
Mr. Sumpter: Yes sir, I was never at either place in my life. I sold goods at Livermore, I used to have a customer there,
281 and sold him a little stuff, but I don't know but little about it.
Mr. Thomas: Bowling Green, while it is a mile from the river—the center of the city is a mile from the river, has a store door delivery?
Mr. Sumpter: Yes sir.
Mr. Thomas: He asked you about Clarksville having stores on the bank of the river, and how the traffic originated in Clarksville; wasn't the original traffic of Bowling Green out to the world all carried by the river?
Mr. Sumpter: Yes sir, before the L. & N. was built.

Mr. Thomas: Did we not have originally one of the first railroads built in this country?

Mr. Sumpter: Yes sir.

Mr. Thomas: From where the court house is now in Bowling Green to the river, with cars running on it, and run by horses, hauling freight, on a regular railroad, and isn't that track now owned by the Louisville and Nashville Railroad, and part of its system?

Mr. Sumpter: Yes sir.

Mr. Thomas: Running an elevator?

Mr. Sumpter: Yes sir

Mr. ——: And the L. & N. Railroad even now owns the original Portage railroad which was here before any railroad came?

Mr. Sumpter: Yes sir, that is a fact.

Mr. Thomas: And runs its cars over it, and it belongs to it?

Mr. Sumpter: Yes sir.

Mr. Thomas: Were not fortunes made along the banks of the Barren River in the old days, by the Conner Pork Company, and here on the bank of the river? Isn't that part of the history of Bowling Green?

Mr. Sumpter: Yes sir.

Mr. Thomas: And Lucas, with his factory?

Mr. Sumpter: Yes sir.

Mr. Thomas: And later on, Claypole?

Mr. Sumpter: Yes sir.

Mr. Thomas: And killed thousands of hogs right there on the bank of the river?

Mr. Sumpter: Yes sir, the Bowling Green side in that—that took in a large territory.

Mr. Thomas: Bowling Green was at one time the largest tobacco market in Kentucky, wasn't it?

Mr. Sumpter: Yes sir.

Mr. Thomas: Because it had the slack water navigation, and all this other territory brought its tobacco here?

Mr. Sumpter: Yes sir.

Mr. Thomas: Now when the Sun was in operation, and you had the lower freight rates, and there was a cut made in the rates, did they not haul tobacco in the hogshead from Franklin, Kentucky, in Simpson County, twenty odd miles below here, to Bowling Green, and ship it by boat?

Mr. Sumpter: Yes sir, and hauled salt back in the empties.

282 Mr. Thomas: And Franklin was a station on the L. & N. Railroad?

Mr. Sumpter: Yes sir.

Mr. Thomas: In Simpson County?

Mr. Sumpter: Yes sir.

Mr. Thomas: Were not also hogsheads hauled from Barren County here?

Mr. Sumpter: From Glasgow.

Mr. Thomas: Shipped by boat, during that cutting of rates. In the old Barren and Green River Navigation Company, and after the L. & N. had been in operation here for years, didn't the old Green

River and Barren River Navigation Company hauled quantities of tobacco in the hogshead to Louisville and out to the world?

Mr. Sumpter: Yes sir.

Mr. Thomas: Can you now get a through rate by boat into Bowling Green or out of Bowling Green?

Mr. Sumpter: No sir, you cannot get a through rate from Cincinnati to Bowling Green by water.

Mr. Thomas: The boat people will not give you one?

Mr. Sumpter: And you cannot get it from Louisville—have just made application.

Mr. Goodwyn: If you could, would you want to ship that way?

Mr. Sumpter: If we could get the old system of low rates we would. It ought to be much lower now on quantity shipments.

Mr. Thomas: On heavy shipments you do a great deal of it?

Mr. Sumpter: If the improvement on the railroad track would affect us, it ought to affect Clarksville and Nashville on the same basis.

Mr. Colston: I believe you said you jobbed in Livermore, which is another station on the Barren River, on the navigable part of the Green River?

Mr. Sumpter: I had a friend over there that I used to sell him a little bunch of Holiday stuff, was all I knew about Livermore.

Mr. Colston: You did sell goods there, although as regards water competition as favorable a position as Bowling Green?

Mr. Sumpter: And I have sold goods to the United States Government, and delivered them in Louisville.

Mr. Colston: In spite of these unfavorable rates that you had to Bowling Green?

Mr. Sumpter: Yes sir.

Mr. Colston: It is your opinion that the amount of business done, or the population of the town should determine the question as to its being a basing point, or not a basing point?

Mr. Sumpter: Well, I think the tonnage of the business and the amount of business would in a great measure determine, yes sir, I think so.

Mr. Thomas: That is a matter for the law and the Commission.

Mr. Colston: That is the only advantage that Bowling Green has over Livermore, isn't it? Or Memphis Junction over Livermore, Livermore being a station on the Green River below the head
283 of navigation?

Mr. Sumpter: I never was at Livermore, and I couldn't tell you.

Mr. Colston: As a matter of fact, you don't know what the population of Livermore and the population of Rockport are, do you?

Mr. Sumpter: No sir.

Examiner Boyle: This packet line, does that run to Rockport and Livermore, the Evansville & Bowling Green Packet Line?

Mr. Sumpter: It is on the way there.

Examiner Boyle: Does it stop there?

Mr. Sumpter: Yes, sir.

Examiner Boyle: Have regular stops?

Mr. Sumpter: Yes sir.

Examiner Boyle: Do you know whether they carry any freight there or not?

Mr. Sumpter: Oh yes sir.

Examiner Boyle: You said that the L. & N. Railroad never solicited freight to be carried per river from Bowling Green?

Mr. Sumpter: I never heard of their soliciting freight at all, anywhere.

Examiner Boyle: Does the Packet Company solicit freights?

Mr. Sumpter: Yes sir; I never had a solicitor in my life soliciting for it.

Examiner Boyle: Have you any idea how heavy the amount of freight is by the Packet Company—how heavy it has been?

Mr. Sumpter: We can give you some figures on that, later on.

Mr. Colston: You have testified to a little history, in response to Mr. Thomas' questions, on cross examination, I would like to learn a little more about this condition of water competition in the old days. When was this railroad from the business center of Bowling Green to the river built?

Mr. Sumpter: I couldn't tell you; but we have got some witnesses here that we can put on the stand that can give it to you, back before my day.

Mr. Colston: What you have testified to in regard to that is mere hearsay, you don't know anything about it?

Mr. Sumpter: Yes sir, I just agreed with Mr. Thomas; the statement as to the Conner Pork House and the last one, the Clayton Packing Company, I was here, I know all about that, when the Clayton Packing Company was in operation—the other packing company.

Mr. Colston: When was the Claypole Packing Company in operation?

Mr. Sumpter: It has been 12 or 15 years ago?

Mr. Colston: That is not ancient history then?

Mr. Sumpter: No sir, but the other was; if you want detailed history, I can give it to you.

Mr. Thomas: Do you remember once when they were digging up the street out here in front of the Court house and dug up some old cross-ties and rails of the old railway, up town?

Mr. Sumpter: Yes sir, I saw them with my own eyes.

284 Examiner Boyle: Mr. Sumpter, you have competitors in Nashville and Clarksville?

Mr. Sumpter: Oh, yes, and in Louisville; we have competitors that cover the same territory that we do, in Louisville.

Examiner Boyle: Do you know any instances where you have not been able to get the territory that you think rightfully belongs to you on account of the rates applying in and out of Louisville, Nashville and Clarksville?

Mr. Sumpter: Well, I don't know that I could cite you any special case; it more affects the grocery line than it does mine. My line is a different line—paints and such as that, we manufacture a certain brand of paint. We get out the Park City Line, and nobody

else has any Park City line, and I go in and establish an agency, it is a question of my making the price, there is a difference in the price of those things; it is not like a staple at all. It is a different proposition. There are others here that can give you the detail as to the handicap to the size of the territory better than I can on those points.

Examiner Boyle: If you should get here at Bowling Green the same rates as Louisville to points to the South and Southeast, the same rates to points north of the River as apply to Clarksville and Nashville, you would be satisfied, I presume.

Mr. Sumpter: I think so, yes sir.

Mr. Connell: Do I understand that you compete with Louisville in the jobbing business?

Mr. Sumpter: Our territory, yes sir, grocery business and everything else, the Louisville men cover the same territory.

Mr. Thomas: It means compete, to cover the same territory?

Mr. Sumpter: Yes sir.

Mr. Connell: And the same as to Indianapolis?

Mr. Sumpter: I don't know about that. Some of those grocery people could tell you more about that—some lines anyhow.

Whereupon, at 12:30 P. M., a recess was taken until 2 P. M.

After Recess.

Examiner Boyle: Gentlemen, we will resume now.

Mr. Thomas: Well, I will take Mr. Cristal next.

SAMUEL CRISTAL was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Thomas: What is your age, name, residence and occupation?

Mr. Cristal: My age is fifty-one; will be soon. My name is Samuel Cristal; residence, Bowling Green, Kentucky.

Q. What is your occupation?

Mr. Cristal:

A. Dealer and shipper in produce, eggs and poultry principally.

Mr. Thomas: What is the style of your firm?

285 Mr. Cristal: Sam Nahm & Company.

Mr. Thomas: How long have you been engaged in this business?

Mr. Cristal: The firm has been in existence since 1870; I personally have been connected with it since 1895.

Mr. Thomas: Are you likewise engaged in business at any other point in dealing in produce and poultry?

Mr. Cristal: Yes sir, we have a house in Nashville, Tennessee.

Mr. Thomas: Ship from there also?

A. Ship from there, yes sir.

Mr. Thomas: You say you are dealers in produce and poultry. Tell the Examiner how and in what way you deal in it?

Mr. Crystal: We buy them by the wholesale, from the merchants principally, buy eggs and poultry and prepare them for the Eastern markets, altogether; that is, I won't say that; in some seasons of the year we ship South, but nine months of the year we go east—New York, Boston and Philadelphia—to those large markets.

Mr. Thomas: Give a comparison between the rates on poultry between Nashville and Clarksville and Bowling Green, Kentucky, as you are shipping from both Nashville and Bowling Green?

Mr. Cristal: I can give you a more definite rate between Nashville and Bowling Green, and I can only presume as to the rates from Clarksville. I take it that eggs being classed as second class, dressed poultry first class, and I will give the L. & N. Railroad Company the benefit of the doubt as to there being a commodity rate in existence from Clarksville to the East—I don't know whether they have one, but even so, if there is no commodity rate their class rates will be very nearly equal to that of Nashville—very close. From Nashville to New York, which is the principal point, we ship goods from Bowling Green at the rate of 78½, car load or less, which is second class commodity; dressed poultry, 88 cents. From Bowling Green, we stop a car—very frequently we want to fill up a car, we have not the tonnage at this time of the year—it requires 10,000 minimum in order for the transportation, only the connecting lines north of the Ohio River to absorb the stoppage charges, for that reason we must have 10,000 pounds in the car. At Nashville we can put in 100 pounds or 500 pounds, or 1,000 pounds, and the rate will be the same—78½ on eggs and 88 on poultry. When we stop a car at Bowling Green to fill it, which we have to do at this time of the year, we pay, 72 miles this side of Nashville we pay 1.12 on the eggs and 1.22 on the poultry, to carry it on to New York.

Mr. Thomas: Is that the same rate when it originates here?

Mr. Crystal: Well, it is the same rate if it is less than a car load, 10,000 minimum. If we have 10,000 minimum here our rate on eggs is 94, rate on dressed poultry, 1.15.

Mr. Thomas: What did you say it was in Nashville when you had a car load on?

Mr. Cristal: There is no difference there; car load or less, 78½ and 88.

Mr. Thomas: Now do those eggs and poultry that you have
286 described that you ship to the East at these rates, pass over the main line of the Louisville & Nashville Railroad?

Mr. Cristal: Right through Bowling Green. As a matter of fact, we stop the car, in order to fill it from here, whenever we have not the required tonnage at the other place.

Mr. Thomas: And it is over the same line?

Mr. Cristal: Over the same line.

Mr. Thomas: In the same direction?

Mr. Cristal: Same direction, passing through Bowling Green.

Mr. Thomas: The shorter haul being through the longer?

Mr. Cristal: Yes sir.

Mr. Thomas: Yet you ship for the longer haul at a less rate than you do for the short one?

Mr. Cristal: Yes sir, we do.

Mr. Thomas: You say that stopping the car in Bowling Green to take anything on makes you pay an additional rate on it?

Mr. Cristal: The additional rate between 78-1/2 and 1.12. That is 33-1/2 cents. On poultry, the difference between 1.22 and 88-34 cents.

Mr. Thomas: Have you been engaged in this business exclusively since you went into it?

Mr. Cristal: Since 1895. Sixteen years or over—17.

Mr. Thomas: Buy it, and ship a great deal of it?

Mr. Cristal: Yes, sir, we buy a great deal more than—well, I should say, at the present time, Bowling Green ships as much poultry and eggs East—well, I will not be sure of that—very nearly as much as Nashville, from the fact that a good deal of the stuff coming into Nashville is consumed locally, while as a matter of fact here *is* is ninety-five per cent. goes out.

Mr. Thomas: So while a good deal is consumed locally in Nashville, a large part of it goes and must go somewhere?

Mr. Cristal: Yes, I mean to say, by this, that Bowling Green ships as much out and exports as much, or nearly as much, at the present time, as Nashville.

Mr. Thomas: You have been to Clarksville, Tennessee, haven't you?

Mr. Cristal: Yes sir.

Mr. Thomas: Do you know of any reason, in the conditions surrounding Nashville or Clarksville and the conditions surrounding Bowing Green, can you know of any reason for this difference—any just reason for this difference in these freight rates?—charging less for the longer than for the shorter haul?

Mr. Cristal: No sir, I don't know. I have been trying to think about that, and to find out, if there is a reason. We have investigated that, too, at one time, from the fact that we intended to locate at Clarksville, and found that the quantity was considerably smaller there—it was at that time—than it was at Bowling Green.

Mr. Thomas: You mean the opportunities to buy?

Mr. Cristal: Yes sir, the opportunities to buy, that is what we are looking for, to buy, in order to ship out; as far as our line
287 in concerned, I can see no reason at all.

Mr. Thomas: Now you ship from both places?

Mr. Cristal: Yes sir, we do.

Mr. Thomas: From Nashville and Bowling Green?

Mr. Cristal: Yes sir, we do.

Mr. Thomas: Do dressed poultry and eggs, while usually traveling by railroad, on account of refrigeration and preventing from freezing is it the universal rule that dressed poultry and eggs travel by rail, instead of by water?

Mr. Cristal: This may be applicable to dressed poultry only, as far as all rail is concerned, on account of the perishableness of the stock; but of eggs it cannot be said altogether. It is certainly most convenient, and especially by rail, but we have shipped by boat.

Mr. Thomas: Did you ever ship by boat from here to any Eastern point, eggs, by the quantity, through the season?

Mr. Cristal: Yes sir.

Mr. Thomas: Where were you shipping to?

Mr. Cristal: We were shipping to Utica, New York. In 1896, we made a contract with some dealers in Utica, N. Y., to take our produce for the Spring, beginning as early as February, to last until the hot season—that is, the eggs for the purpose of storing them. We figured with them, and came to an agreement, basing our rate as that of the New York through rate of 94 cents, less six cents, the difference between the rate from Cincinnati to Utica and the rate between Cincinnati, Ohio and New York; and we shipped out the first car, our bill came back with the rate of 1.12, car lot. We made inquiries at the time, and they told us that the through rate of 94 cents applies only to through shipments to New York, Utica being an interior point, although it is two hundred miles this side of New York City, that rate does not apply, and consequently they must charge us the local rate, which is 1.12. Of course we could not at that time, we having already made the contract and guaranteed the rate to be not over that, ship by rail, but we were then compelled to ship by boat. Mr. Bewley was running the Gayoso, and I think another boat, at that time, and I think Mr. Goodwyn may find a history of it—Mr. Stout was then Agent at Bowling Green. We had considerable correspondence over it, and they stood their ground, and said that they would not give in, and we shipped something between 5,000 and 7,000 cases that season, from Evansville, hauled them here to the River, and from there we transferred them to the E. & T. H., and got a rate of .85—through rate—and that is history. I think you will find the record, of the L. & N.

Mr. Thomas: You shipped eggs at 85c. as against $1.12 by rail?

Mr. Cristal: Yes sir.

Mr. *Mr.* Thomas: Carried out by using the River, at that time?

Mr. Cristal: Yes sir.

Mr. Bewley: Using the Gayoso?

Mr. Cristal: Yes sir, 85c. from Bowling Green to New York. The E. & T. H. gave us a rate of 65c. and they paid the
288 transfer charges from the wharf to the cars.

Mr. Goodwyn: In Evansville?

Mr. Cristal: In Evansville.

Mr. Goodwyn: What year was that, you say?

Mr. Cristal: In 1896; I think I am right about the year; it is either 1895 or 1896, somewhere in the neighborhood of that. The L. & N. Railroad can find the records. They made inquiries, then, from time to time, how many eggs we shipped out, and they never conceded the point that we were right in the matter.

Mr. Thomas: Mr. Cristal, considering the fact that Bowling Green has continuous, uninterrupted navigation by river throughout the year, to Evansville, Indiana, a point without the State, and a market, by commodious boats, capable of handling a large amount of traffic, and that Nashville and Clarksville on the Cumberland only have navigation throughout the year not exceeding seven months,

the remainder of the time the boats being idle, tied up earning nothing, and the further fact that it is 340 miles from Nashville to Evansville with a transfer at the mouth of the Cumberland River to another boat, and that our transportation is continuous to Evansville all the way; is there any reason why freight rates should not be as low and the river traffic carried as cheaply by the boats from Bowling Green to Evansville, as from Clarksville and Nashville, to the Ohio River?

Mr. Cristal: I don't know of any reason. On the contrary, I rather think that the labor and transportation over the Green and Barren, by reason of the fact that is continuous transportation, ought to be cheaper.

Mr. Thomas: Wouldn't the fact that the boats can run all the time, instead of remaining idle, be another element?

Mr. Cristal: It would be; that is, if we were running our plant seven months in the year, and for the rest of the time idle, I would consider from our point of view, I never run a boat, but I know if we had to shut down five months in the year, our expense would be necessarily greater for the per cent of the amount of business done at the end of the year. For that reason I think that we ought to be able to carry freight for less money than the Cumberland River people.

Mr. Thomas: What sort of territory surrounds Bowling Green, agricultural country?

Mr. Cristal: Very fine territory, in our line particularly, very good territory, and our commodity that we deal in has increased, well in proportion to others, we handle a great deal of stuff, considering.

Mr. Thomas: Is a fine county, agriculturally?

Mr. Cristal: Yes, to my knowledge, it is, as far as I know anything about it.

Mr. Thomas: The boats do not run above Bowling Green, on Barren River, do they?

Mr. Cristal: No sir, no boats above.

289 Mr. Thomas: Bowling Green is ahead of slack water navigation on the Green and Barren Rivers?

Mr. Cristal: Yes sir.

Mr. Thomas: On the Green and Barren River System?

Mr. Cristal: Yes sir, that is my understanding.

Mr. Thomas: And Mammoth Cave is the head on the upper Green River?

Mr. Cristal: On what the- call the Upper Green, as I understand it.

Mr. Thomas: And the main packets which run this river, the regular packets which make these twice-a-week trips have Bowling Green as one destination, in Kentucky, and Evansville, Indiana, as the other destination?

Mr. Cristal: Yes sir.

Mr. Thomas: And the other points on the River are intermediate points?

Mr. Cristal: Yes sir, that is my understanding, that those are the two points. Now we also find, since we have been in Nashville, that we can ship stuff to Louisville a little bit cheaper than we can to

Bowling Green or from Bowling Green. I find that we have sometimes an outlet for butter, that we do not want to ship to the East we can sell it locally, for instance, to Louisville, and since we have been there we have shipped several thousand pounds of butter from Nashville to Lousiville, at 28 cents a hundred; from Bowling Green we pay 55.

Mr. Thomas: You get it from Nashville at 28c.

Mr. Cristal: 28, right by our door; we also find these eggs, sometimes we want to ship to Louisville, possibly, and store them; our eggs would cost us from Bowling Green to Louisville 47, regular local second class rates, from Nashville we can ship it for 24; from Bowling Green to Nashville, 39; and from Nashville to Louisville, 24.

Mr. Thomas: You mean if you go from Bowling Green down to Nashville——

Mr. Cristal: We pay 39, and we pay 45 on butter.

Mr. Thomas: And that is going over the same road?

Mr. Cristal: Yes sir.

Mr. Thomas: Both these shipments travel over the same road, and the same line?

Mr. Cristal: Yes sir.

Mr. Thomas: Anything else there that you can notice?

Mr. Cristal: Yes, sir, on butter, we pay 55 from here, and they pay 20 elsewhere. There is wool, passes right by here from Nashville to Louisville, 24; we pay 28. That is a commodity that occurs only one season of the year, we handle it in all about 50,000; hides, 15, Nashville to Louisville; 20 from Bowling Green. I want to state this, that this 20 cents on hides is a commodity rate which has come down to us through the operation of the steamer Sun; we also used to ship hides, back when Mr. Bewley ran the boat independently, we used to ship our hides by Evansville to Louisville, in order to get the lower rate; that is what caused the L. & N. to give us this commodity rate of 20 cents on hides; heretofore it was 31, up to that time. That rate is still in existence.

290

Mr. Thomas: You have retained that rate?

Mr. Cristal: That rate is still retained.

Mr. Thomas: Still, though, you could ship from Nashville cheaper than that, to Louisville?

Mr. Cristal: Yes sir, Nashville to Louisville, it is 15.

Mr. Thomas: And when you get to Louisville, Louisville has got rates everywhere?

Mr. Cristal: Yes sir, Louisville is all right, we can get rates to competing lines everywhere. I had a record somewhere, I am sorry I lost it, of the existing rates, at the time the rates were in effect during the existence of the steamer Sun. Mr. Sumpter forgot about those things.

Mr. Thomas: That is since you have been in business?

Mr. Cristal: Yes sir, we were interested in that.

Mr. Thomas: So you went in in 1895?

Mr. Cristal: Yes, sir.

Mr. Thomas: So you were wrong about 1885?

Mr. Cristal: Yes sir, 1901. I have some money in there; it is going to stay there.

Mr. Thomas: Let me ask you about those rates. The steamer Sun was put in by the merchants, wasn't it—the shippers?

Mr. Cristal: Yes sir.

Mr. Thomas: And operated about twelve months, was it?

Mr. Cristal: It operated nearly a year—very close to a year, I think.

Mr. Thomas: The merchants went into an agreement to patronize it?

Mr. Cristal: The Bowling Green merchants, I believe, did with a few exceptions.

Mr. Thomas: This packet company was already in operation at that time?

Mr. Cristal: Yes, sir.

Mr. Thomas: The Gayoso had gone out?

Mr. Cristal: Yes, sir, everything was out.

Mr. Thomas: And the Blue Wing?

Mr. Cristal. Everything was out except the present company was operating at that time.

Mr. Thomas: After the Sun was put in and the scale of rates fixed, what effect did it have on the rates on the other boats on the river?

Mr. Cristal: The other boats cut their rates fifty per cent—sometimes one hundred per cent. Don't laugh at that. I had had them tell me that they would go off in the woods and hunt up the hogs and haul them to Louisville for nothing—that means a hundred per cent.

Mr. Colston: That is what somebody told you—hearsay?

Mr. Cristal: Yes sir; I wouldn't swear that I have men here that I can prove these things by. I merely wanted to say—you laughed at one hundred per cent. I just want to explain that.

291 Mr. Goodwyn: I am surprised that anybody wants to do any business for nothing.

Mr. Thomas: That was not the object; that was to put the boat out of business.

Mr. Cristal: I want to say that the L. & N. Railroad's through rates about that time, it was very definite, they gave us the rates that Nashville now enjoys at the present time, on everything—on our eggs, poultry and butter and hides.

Examiner Boyle: When was that?

Mr. Cristal: During the operation of the steamer Sun.

Examiner Boyle: Which was in 1901, you say?

Mr. Cristal: I am not sure of that year exactly, but 1901—I am sorry I lost the rate sheet, but I had the rates approximately at that time. 1901 was the year. They had very good rates at that time.

Mr. Thomas: After the Sun went down, as the gentlemen are so accustomed to saying, what effect did it have upon your freight rates?

Mr .Cristal: They were raised some.

Mr. Thomas: They were?

Mr. Cristal: Yes sir, up to that time, the L. & N. Railroad, and

the Sun went down, at that time we had no rate of car load or less, we had the same rate on eggs; after that they notified us that the rates thereafter would be 18 cents higher on less than car load, and also on some other commodities they changed the rates, I don't remember exactly I couldn't state specificatlly what they were, but I know that the rates have been advanced.

Mr. Thomas: And during all that time that the Sun was in operation, you say you enjoyed the rates that Nashville had?

Mr. Cristal: Yes sir, we had the same rates, or near about that—not any higher, I am satisfied. I am sorry that I haven't got the rate sheet with me. I lost it somewhere. I thought I would have no use for it any more, and I threw it away. I had the rates written down.

Mr. Thomas: You are operating business in both places, Nashville and Bowling Green; is it not an undue and an unreasonable prejudice and disadvantage to Bowling Green—I say prejudice, I mean commercial prejudice?

Mr. Cristal: I understand.

Mr. Thomas: To have us charged these rates which you have named and the other rates set forth in this complaint, while Nashville can have rates from the East, inbound and outbound, and rates to the South and Southeast, outbound and inbound, at a very much dower scale than Bowling Green has?

Mr. Cristal: Certainly, it cannot be neither way, it is prejudicial to the interests of the city of Bowling Green, it retards its progress.

Mr. Thomas: Take Bowling Green as a jobbing center, which it is testified to ought to have an opportunity to be, a good jobbing center, with the River, and intermediate points, and the topography of the country back of it, would it not, and does it not seriously handicap it in handling and meeting competition in the territory which should naturally belong to it?

292 Mr. Cristal: That is my understanding of it. I haven't had any experience in any other line except my own, but I understand it that no jobbing house could exist here to any extent.

Mr. Thomas: That would be the natural effect, wouldn't it?

Mr. Cristal: Yes; on heavy commodities the freight charge cuts quite a figure; it does with us.

Cross-examination:

Mr. Colston: I have no questions.

Mr. Connell: You make no complaint of the rates from Bowling Green to Utica, do you, on eggs, in this complaint?

Mr. Cristal: No sir, we have no complaints; we have made no complaints, as to the rates from Cincinnati to the East we have no complaints, from Cincinnati or Louisville; we have not the privilege of shipping from Louisville. The L. & N. Railroad Company always wants us to ship to Cincinnati or to the terminus of their line, and then they turn it over to the connecting lines. We have no complaints at all from that.

Mr. Connell: You say the rates north of the Ohio River, you have no complaints?

Mr. Cristal: We have no complaints, no sir, they are very reasonable as far as I can see, but so far as I know they are not unreasonable from the fact that I have figured it here that our rate, say the less than car load rate to New York is 1.12, of which the connecting lines get 54.2¢ the L. & N. Railroad gets 57.8¢; I see they are reasonable as compared with those; the L. & N. hauls it 230 miles from Bowling Green to Cincinnati, the connecting lines there haul it about twice or three time the distance, I should say—I don't know exactly what the distance is, it is twice, or more than that, for a less amount, consequently it would be unreasonable for us to say that those people have not a reasonable rate as compared to this.

Mr. Connell: You have no complaint to make of the class rates from the points north of the Ohio River to Bowling Green?

Mr. Cristal: I don't know anything about that. We have nothing shipped into Bowling Green, all our business is out-going business.

Mr. Connell: You stated you made some contract, and expected the rate to Utica would be better than the rate to New York, Utica being an intermediate point?

Mr. Cristal: Yes sir.

Mr. Connell: You don't mean Utica is strictly an intermediate point between Bowling Green and New York, do you?

Mr. Cristal: I mean to say that is what we were informed by some of the freight agents, that the rate to Utica is six cents less than to New York from Cincinnati, at that time it was, I don't know how it is now.

Mr. Connell: But the short line distance from Bowling Green to New York would not be through Utica, I believe?

Mr. Cristal: No, not always. In the case of the Pennsylvania it does not go through that city.

Mr. Connell: I say the short line distance?

293 Mr. Cristal: I couldn't tell you exactly as to that. I think, though, the New York Central passes through Utica.

Mr. Connell: The New York Central does.

Mr. Cristal: That is the one we ship by, the New York Central, the same as we ship to Boston; we prefer it because it is the most direct line, and gives us the quickest service.

Mr. Connell: But Utica is a good many miles northwest of the city of New York?

Mr. Cristal: We didn't consider that; we only considered that the rate was six cents less to Utica than it was to New York, from Cincinnati, consequently we took it for granted that we would get at least the same rate as we would to New York, whether it is direct or indirect—I didn't study that part of it at all.

Examiner Boyle: Mr. Cristal, I believe you stated that all the data you had as to rates by the old packet line—that is, prior to the establishment of the Sun, and the rates in effect when the Sun was put into operation, and after that, together with the railroad rates during all this period—the data containing this information has been lost or destroyed, and you are unable to find it?

Mr. Cristal: Out of my possession, yes, sir, I am sorry I haven't got it.

R. C. DUNCAN, was called as a witness, and having been duly sworn, testified as follows:

Mr. Thomas: Your name is R. C. Duncan?
Mr. Duncan: Yes sir, it is.
Mr. Thomas: How old are you?
Mr. Duncan: Fifty-seven.
Mr. Thomas: In what business are you engaged?
Mr. Duncan: Wholesale Grocery business.
Mr. Thomas: Where?
Mr. Duncan: In this city.
Mr. Thomas: How long have you been so engaged?
Mr. Duncan: I began in 1896; I was in business three years, and then I was out until the first of 1905; continuously since the first of 1905, nearly seven years.
Mr. Thomas: How long have you been engaged in it the last time?
Mr. Duncan: Nearly seven years.
Mr. Thomas: Jobbing and Wholesale Grocery business at Bowling Green?
Mr. Duncan: Yes, sir.
Mr. Thomas: What territory would be legitimately contiguous to Bowling Green and subject to Bowling Green trade, say, in your line of business?
Mr. Duncan: Well, under conditions that are favorable to us, placed on even chances with Clarksville and Nashville, we could meet them half way, at least. Under existing circumstances it is very much more circumscribed.
Mr. Thomas: How has the jobbing business been affected with the fact that Bowling Green has only local rates instead of be-
294 ing a basing point?
Mr. Duncan: Been very greatly curtailed, undoubtedly.
Mr. Thomas: Did you, when you first came here, have any rates that were in existence, that are not now?
Mr. Duncan: I did.
Mr. Thomas: State in what respects?
Mr. Duncan: I had a flat rate of fifteen cents a hundred from Louisville here without any classification.
Mr. Thomas: What year was that?
Mr. Duncan: That was in 1896.
Mr. Thomas: Flat rate on groceries?
Mr. Duncan: Yes sir, everything that I handled.
Mr. Thomas: What is that rate now?
Mr. Duncan: From, I think, 17½ is the lowest car load rate in anything that I handle, up to 55, I think that is the highest.
Mr. Thomas: From 17½ to 55, now?
Mr. Duncan: Yes sir.
Mr. Thomas: Did you ever have a brother engaged in business, in the grocery business, anywhere near Bowling Green?
Mr. Duncan: Yes sir, at South Union, I think it is 12 miles from Bowling Green, in 1905, the year that I started this present business.
Mr. Thomas: On the Memphis line of the L. & N. Railroad?
Mr. Duncan: Yes sir.

Mr. Thomas: Did you have any trouble in selling him any of the commodities which he handled on account of the freight rates, and did you meet any competition there from elsewhere which interfered with your selling to him?

Mr. Duncan: On sugar alone, I could not sell him sugar in competition with Clarksville.

Mr. Thomas: Did you meet Clarksville competition there?

Mr. Duncan: I did not.

Mr. Thomas: I mean Clarksville competition came there?

Mr. Duncan: Yes sir.

Mr. Thomas: You could not meet it?

Mr. Duncan: No sir.

Mr. Thomas: What was the rate on sugar at that time?

Mr. Duncan: I don't remember.

Mr. Thomas: Has it been reduced some since then?

Mr. Duncan: Yes sir.

Mr. Thomas: What is the rate now, on sugar?

Mr. Duncan: Twenty cents on New Orleans; we have no rate from the east at all, except the two rates—Louisville, plus the local rate.

Mr. Thomas: Is it, or not, true, that Bowling Green rates are local rates, that is the rate to Louisville or to Evansville, plus the local rate here?

Mr. Duncan: Yes sir, that is my information.

Mr. Thomas: That that is the rates?

Mr. Duncan: Yes sir.

Mr. Thomas: Have you found any difficulty in meeting the competition from other points with your jobbing trade here in the
295 wholesale grocery business on account of the freight rates into Bowing Green on the goods you have to buy?

Mr. Duncan: Most assuredly.

Mr. Thomas: How does it affect it?

Mr. Duncan: It just circumscribes the business more; I cannot get as far away as I could, with this burden of cost to go against the competing business.

Mr. Thomas: That is a burden of cost on the article?

Mr. Duncan: Yes sir.

Mr. Thomas: That will limit the point to which you can go?

Mr. Duncan: Yes sir.

Q. Has the river transportation between Bowling Green and Evansville been continuous, since you have been here?

A. Mr. Duncan: Yes sir.

Mr. Thomas: Throughout the year?

Mr. Duncan: Yes sir.

Mr. Thomas: How many boats a week? Do you know?

Mr. Duncan: Two boats, that each makes two trips a week; what we call four boats a week.

Mr. Thomas: Passenger and freight boats?

Mr. Duncan: Yes sir.

Mr. Thomas: Have either Nashville or Clarksville any advantages over Bowling Green, or should they have any, in regard to river

transportation, considering the Cumberland River and Green and Barren River navigation system?

Mr. Duncan: I think not; I think the difference should be in our favor, if we consider the quality of the river—not the water, however.

Mr. Thomas: Considering the fact that our transportation from Bowling Green is the head of slack water navigation on the Green and Barren River system, is continuous and uninterrupted, without transfer of any kind at Evansville, Indiana, on the Ohio River, and the fact that the boats can only run on the Cumberland River, from Clarksville to Nashville, not exceeding seven months in the year, and must cease the operations for the rest of the time, in the river there, the loss incident to being tied up, as a business man would you say that the freight on Green and Barren Rivers could be handled as cheaply and at as low a rate as it could on the Cumberland?

Mr. Duncan: I should think so, fully.

Mr. Thomas: When was the rate of 15 cents that you had on commodities of all kinds, unclassified, from Louisville to Bowling Green, withdrawn?

Mr. Duncan: Approximately six or eight months after it was made; I couldn't say precisely, but approximately that.

Mr. Thomas: How was it withdrawn?

Mr. Duncan: By letter from Mr. Culp, the Traffic and Freight Agent that made me that rate.

Mr. Thomas: Have you that letter now?

Mr. Duncan: No sir, I have not.

296 Mr. Thomas: Where is that letter?

Mr. Duncan: I don't know what became of that letter. Mr. Culp came to see me, and asked me for the letter, to read it again, and remarked that he supposed I had no further use for it, I told him that I did not—I didn't then—and he took it away with him. I haven't seen it since.

Mr. Thomas: So either Mr. Culp has it, or you don't know where it is?

Mr. Duncan: I do not.

Mr. Thomas: He is the last one you saw with it?

Mr. Duncan: He is the last one I saw with it.

Mr. Thomas: What about Bowling Green's territory surrounding—agriculturally?

Mr. Duncan: We consider it excellent.

Mr. Thomas: What of the possibilities of developing industries about Bowling Green, like the stone business, the furniture manufacturing business, the timber, the asphalt business, from the asphalt mines?

Mr. Duncan: I am not familiar with any of those industries; all I know is the talk that we hear, that there is a great deal of it, and is seeking development, and we are about on the eve of it, etc.

Mr. Thomas: Don't you know there are extensive quarries in operation?

Mr. Duncan: Oh yes, but as to the extent; I don't know.

Mr. Thomas: How far is Brownsville from Bowling Green by land?
Mr. Duncan: Twenty-five miles.
Mr. Thomas: It is on the river is it not, on Green River?
Mr. Duncan: Yes sir.
Mr. Thomas: How far is it by river, to go down the Barren to the confluence of Green, and by the Green to Brownsville?
Mr. Duncan: It is that difference; I don't know precisely.
Mr. Thomas: About sixty miles.?
Mr. Duncan: Yes, somewhere along there.
Mr. Thomas: Would you consider that Brownsville, within 25 miles by land, and 65 miles by river, ought not that to be properly within the jobbing territory of Bowling Green?
Mr. Duncan: I think so.
Mr. Thomas: Morgantown, how far is that?
Mr. Duncan: 36 miles.
Mr. Thomas: Ought that not to be within that?
Mr. Duncan: Yes sir, I think so.

Mr. Thomas:

Q. If you were freed from the burden of cost in getting the articles?
Mr. Duncan: Yes sir.
Mr. Thomas: How far is it to Scottsville, the county seat of Allen County?
Mr. Duncan: Twenty-five miles.
Mr. Thomas: That is by land?
Mr. Duncan: Yes sir.
297 Mr. Thomas: To get there by rail, you have to go around by Gallatin?
Mr. Duncan: Yes sir.
Mr. Duncan: Would that be contiguous jobbing territory?
Mr. Duncan: Yes sir. We consider it so.
Mr. Thomas: Then there is a territory on both sides of Bowling Green, a number of towns on the railroad?
Mr. Duncan: Yes sir.
Mr. Thomas: And then there are other towns off of the railroad?
Mr. Duncan: Yes sir.
Mr. Thomas: Back in the county, which jobbers meet on, they have got to carry the cost of original transportation of the article with them, and that has got to be considered?
Mr. Duncan: Yes sir.
Mr. Thomas: Do you think, having been here in business quite a while, that with freight rates for your kind of business adjusted on the basis of Clarksville and Nashville, that the jobbing business could be made a success here?
Mr. Duncan: I do. If we were given even chances with other people, we certainly would not reproach the L. & N. Railroad, if we got an even chance.
Mr. Thomas: It is the undue prejudice and disadvantage that you complain of?

Mr. Duncan: I think so.
Mr. Thomas: Bowling Green, then, in your opinion, should be a basing point for rates?
Mr. Duncan: I think it should, in justice to it.
Mr. Thomas: As a competitive point?
Mr. Duncan: Yes sir.
Mr. Thomas: Using the river as an element for the reason in doing that?
Mr. Duncan: Yes sir.
Mr. Thomas: If it is a reason in the Nashville and Clarksville case, it is also a potent reason in Bowling Green?
Mr. Duncan: Yes sir.
Mr. Thomas: A greater reason?
Mr. Duncan: Yes sir.
Mr. Thomas: Do you know of any advantage that Clarksville has over us to entitle her to better rates?
Mr. Duncan: I do not; they have an additional railroad there, of course, we all understand. My information is that the rate is no better than it was before.
Mr. Thomas: That is the Tennessee Central?
Mr. Duncan: Yes sir.
Mr. Thomas: But the rates are the same as it was before?
Mr. Duncan: Yes sir.
Mr. Thomas: It has not been affected by that?
Mr. Duncan: So I am informed.

298 Cross-examination:

Mr. Colston: When was it that you were in business the first time in Bowling Green?
Mr. Duncan: I began in March, 1896.
Mr. Colston: And ceased doing business when?
Mr. Duncan: About three years after.
Mr. Colston: And then when did you go back again?
Mr. Duncan: The first of the year 1905.
Mr. Colston: Then from 1899 to 1905, you were out of business?
Mr. Duncan: Out of the wholesale grocery business.
Mr. Colston: What business were you engaged in during that time?
Mr. Duncan: Some of the time I did nothing; at others I traveled for other people. I was in the retail grocery business for part of the time.
Mr. Colston: How did you happen to go back into the wholesale grocery business in 1905, had the rates been bettered to any extent?
Mr. Duncan: No sir, they had not, but I believed that our wrongs would be righted, and I had enough faith in it to go in again.
Mr. Colston: You went in just on the chance, then?
Mr. Duncan: Yes sir, that is it.
Mr. Colston: You have continued from 1905 until 1911, in that belief?
Mr. Duncan: Yes sir.
Mr. Colston: You would not have gone in if you had not had that belief?

Mr. Duncan: I would not.

Mr. Colston: What rates did you have from 1895 to 1899, or '96 to '99?—as compared to the rates you have now?

Mr. Duncan: 1896 to 1899?

Mr. Colston: Yes sir.

Mr. Duncan: They were very variable, my dear sir; sometimes we had no rates, and the others were catch-as-catch-can. I don't remember the published rates, but they were ignored often, the published rates.

Mr. Colston: How did you get this rate of 15c. that you were speaking of?

Mr. Duncan: I was solicited by Mr. Culp to accept that rate.

Mr. Colston: What year was that?

Mr. Duncan: 1896.

Mr. Colston: That was the time you were in business the first time?

Mr. Duncan: That was the time I was buying my first stock to Bowling Green.

Mr. Colston: This rate applied on intra-state business only, did it?

Mr. Duncan: Yes sir.

Mr. Colston: You didn't have any special rates made on interstate traffic?

Mr. Duncan: No sir.

299 Mr. Colston: And these special rates you refer to were rates on intra-state traffic, weren't they, that 15 cent rate covered by the letter, etc.?

Mr. Duncan: Yes, sir.

Mr. Colston: You said Bowling Green rates were local rates. What do you mean by that Mr. Duncan?

Mr. Duncan: I think it was somebody else said that; I beg your pardon.

Mr. Colston: Your attorney asked you, and you agreed with him.

Mr. Duncan: Did I? Well, I will answer then; what is your question, please?

Mr. Colston: I say you testified, in answer to Mr. Thomas' question, that Bowling Green rates are local rates; what do you mean by that?

Mr. Duncan: That it is treated in a general way as Smith's Grove, Rockfield, Auburn, and, as mentioned this morning, Memphis Junction, with some exception of commodity rates.

Mr. Colston: Do you mean you are on a strict mileage scale rate?

Mr. Duncan: No sir, certainly not.

Mr. Colston: You are fourteen miles further from Louisville than Smith's Grove?

Mr. Duncan: Yes sir, Smith's Grove takes the same rate Auburn does, dosn't it?

Mr. Colston: You have the same rate with Smith's Grove, have you, on classes?

Mr. Duncan: I think so, and Auburn also.

Mr. Colston: You have a materially less rate on commodities than Smith's Grove?

Mr. Duncan: That is my recollection.

Mr. Colston: Smith's Grove is an intermediate place?

Mr. Duncan: Yes sir; that is, from Louisville.

Mr. Colston: Therefore, you have lower rates on many commodities from Louisville than apply to Smith's Grove, an intermediate point, over the same line, in the same direction, the shorter being included within the longer?

Mr. Duncan: I presume that is correct.

Mr. Colston: You are testifying to the relative cost of operation on the Green and Barren Rivers, as compared with the cost on the Cumberland River. What is the cost per ton mile of handling freight on the two rivers?

Mr. Duncan: I cannot tell you.

Mr. Colston: Do you know the length of the boats that can be accommodated in the locks on the Green River?

Mr. Duncan: Approximately, yes. 135 feet.

Mr. Colston: How many tons?

Mr. Duncan: About 400.

Mr. Colston: Do you think a 400 ton boat can operate on the Green and Barren Rivers?

Mr. Duncan: I do.

300 Mr. Colston: Has a boat ever operated with a registered tonnage of 400?

Mr. Duncan: I doubt the registered tonnage of 400; but they carry 400 tons.

Mr. Colston: Well, in order to get the comparison, let us take the registered tonnage both ways. Do you know what the largest registered tonnage is that can pass through the Green River?

Mr. Duncan: I don't know. I am not a river man.

Mr. Colston: Do you know the largest registered tonnage of a boat—you are a River man—that can ply the Cumberland river?

Mr. Duncan: I do not.

Mr. Colston: Do you know the relative cost of the construction of a boat of two hundred tons register, as compared with a boat of four hundred register?

Mr. Duncan: No sir, I do not.

Mr. Colston: Do you know the relative cost per crew, of the two boats?

Mr. Duncan: No sir, I do not.

Mr. Colston: Do you know the relative cost for fuel?

Mr. Duncan: No sir, I do not.

Mr. Colston: Or for any other of the elements of cost?

Mr. Duncan: No sir, I do not.

Mr. Colston: Then, as a mater of fact, you don't know anything about the relative cost of operating on the two rivers? Is that a fact?

Mr. Duncan: I had in mind, when giving the answer, sir, the fact of one river being navigable the year around, and the other about a half; as to the operation of boats, I don't know anything about that—the cost of operating a boat.

Mr. Colston: You merely assented, then, to the accuracy of counsel's argument in that regard?

Mr. Thomas: To my hypothetical question.

Mr. Duncan: No, I won't admit that; he knows it, and I know it too.

Mr. Colston: What is that you know as to the relative cost?

Mr. Duncan: I didn't say I knew anything about relative cost; I said—begging your pardon, sir,—I meant to say, that I was comparing the time of year that our river is navigable compared with the Cumberland river. That is what I had in mind. I don't know anything about the cost of steamboats nor the cost of operating them.

Mr. Goodwyn: You spoke about some years ago being unable to sell sugar at South Union, I believe; what is your situation at South Union now, as to sugar, compared with Clarksville?

Mr. Duncan: It is very much more favorable to us than then.

Mr. Goodwyn: Do you know what it costs you to deliver sugar at South Union?

Mr. Duncan: Twelve or fourteen cents, from here.

Mr. Goodwyn: Isn't it ten cents, as a matter of fact?

Mr. Duncan: No sir, I think not.

Mr. Goodwyn: That is what the rate is.

Mr. Duncan: Well, I stand corrected.

301 Mr. Goodwyn: You have your rate from New Orleans here; that makes a total of what, assuming 10 cents to be correct?

Mr. Duncan: Thirty.

Mr. Goodwyn: Do you know what the rate is from New Orleans to Clarksville?

Mr. Duncan: I do not.

Mr. Goodwyn: Do you know what the rate is from Clarksville to South Union?

Mr. Duncan: No sir.

Mr. Thomas: Is that 10 cent rate for car load or less than car load?

Mr. Goodwyn: Any quantity, it don't make any difference. You stated that your present rates, I believe, from Louisville to Bowling Green, on the business that you handle, I think you said from 17½ lowest up to 55?

Mr. Duncan: That is my recollection, I don't think of anything that is below 17½.

Mr. Goodwyn: But I wanted to know what you paid 55 on; you handle groceries, I believe?

Mr. Duncan: I don't remember; but I can certainly——

Mr. Goodwyn: I am not disputing it, you understand.

Mr. Duncan: No sir, not at all, but I am sure.

Mr. Goodwyn: The reason of my asking the question is because I understand you are in the grocery business?

Mr. Duncan: Yes sir.

Mr. Goodwyn: And the tariff from Louisville to Bowling Green provides for rates on Louisville to Bowling Green, groceries of all kinds, not over our specified maximum, less than 29, and I thought

perhaps you had been overcharged on some of your groceries, and we wanted to clean it up for you; if you paid 55 on groveries, you have been overcharged, and we would like to correct it. We have no such rate as 55 on groceries.

Examiner Boyle: What is the highest rate commodity you handle?

Mr. Duncan: The rate about 55 cents I think.

Examiner Boyle: I say the highest grade commodities, what you consider the highest grade commodities?

Mr. Duncan: I expect hosiery is about the highest.

Mr. Goodwyn: I thought you were in the grocery business?

Mr. Duncan: A country grocer has a pretty wide sweep.

Mr. Goodwyn: Then I have nothing further to say.

Mr. Duncan: Needles and thread, socks and suspenders.

Mr. Thomas: Do you also handle pencils and tablets?

Mr. Duncan: Yes sir.

Mr. Goodwyn: I understand Mr. Duncan was testifying as a grocer, not on stationery and hosiery.

Mr. Thomas: Not as a corner grocer, he handles liquor. What about tobacco? Do you handle that?

Mr. Duncan: Yes. That has a 47 cent rate from Louisville.

Mr. Thomas: Handle tinware and wooden-ware?

302 Mr. Duncan: Yes sir.

Mr. Goodwyn: Perhaps my question was dictated by my misunderstanding as to Mr. Duncan's business.

Mr. Connell: Do you handle Irish potatoes?

Mr. Duncan: No sir.

Mr. Connell: Do you have any complaint to make at all of the rates that apply north of the Ohio River?

Mr. Duncan: I don't know sir, anything about how the rates are made there. Onr complaint is the aggregate here; I don't know anything about those rates, how they are made into Louisville.

Mr. Connell: As far as you know, you have no complaint to make, though, north of the Ohio River?

Mr. Duncan: Our rate in the aggregate is what we are complaining of, not the rate only from Louisville, but we want to be put on the same basis as Clarksville and Nashville,—Your Honor please, to make it up any way they please; I don't know how those rates are made.

Mr. Connell: You handle navy beans from Jackson, Michigan?

Mr. Duncan: Yes sir.

Mr. Connell: Now the rate on navy beans from Jackson, Michigan to the Ohio River is 19 cents, applying both to Bowling Green and Clarksville and Nashville; in that case you have no complaint?

Mr. Duncan: If it is the same, we have no complaint at all. All we ask is what other people get, if that is a dollar.

Mr. Connell: Do you handle wall-paper, from Worcester, Massachusetts?

Mr. Duncan: No sir.

Mr. Connell: Canned peas, from Indianapolis?

Mr. Duncan: Well, no, I don't think I have ever bought any canned peas from there.

Mr. Connell: Any canned tomatoes from Indianapolis?
Mr. Duncan: No sir.
Mr. Connell: Any syrup from Chicago?
Mr. Duncan: Yes sir.
Mr. Connell: What complaint do you have on syrup rates?
Mr. Duncan: I cannot recall now, unless all that was summarized and compared with the freight there, I cannot recall.
Mr. Connell: Your complaint is really brought about by the fact that you are not getting the same rates as Nashville and Clarksville, is it not?
Mr. Duncan: Yes sir.
Mr. Thomas: Mr. Duncan, he asked you about our rates being local. Aren't our rates made up by the rates to Louisville and to Evansville from the East and then the local rate added on?
Mr. Duncan: Yes sir.
Mr. Thomas: Mr. Colston asked you about the intra-state rate coming from Louisville and going to Louisville; it is the aggregate rate that you complain of?
Mr. Duncan: To be sure.
303 Mr. Thomas: If they add the local rate from Louisville on to the other, it is the result that you are complaining of?
Mr. Duncan: Yes, we do not care how the result is gained.
Mr. Thomas: Louisville is all right, if you can get from there, you can get out to the world?
Mr. Duncan: Yes sir.
Mr. Connell: Then the Louisville rate is satisfactory, as far as you are concerned?
Mr. Duncan: I cannot say so; the aggregate, I say is unsatisfactory, into Louisville and here; I don't know how they arrange the rates from Louisville. Our understanding was that the rates were all based on rates to Louisville plus the Louisville rate to Bowling Green, Clarksville, as I presume, has a better rate north of the Ohio River than we have, and it is the aggregate that I have in mind, from the East or from the Pacific slope, to Bowling Green. I don't know just how that compares with Clarksville.
Mr. Connell: You stated, Mr. Duncan, that the rates were made up of rates to Louisville plus the local rates from Louisville to Bowling Green?
Mr. Duncan: Yes sir.
Mr. Connell: Now how is your complaint?
Mr. Duncan: How is the rate made from eastern points to Clarksville? Is it made up to Louisville plus the Clarksville rate?
Mr. Connell: I cannot answer that question.
Mr. Duncan: I beg your pardon, I was just trying to make myself understood.
Mr. Connell: Taking your statement that the rates to Bowling Green were made up plus the rates from Louisville to Bowling Green, which part of that do you complain of?
Mr. Duncan: Both; it is the aggregate.
Mr. Connell: The citizens of Louisville have made no complaint

of their part of the rate north of the Ohio River, you would be perfectly satisfied with it, would you not?

Mr. Duncan: No, I would want as good as our competitors down here at Clarksville or Nashville.

Mr. Connell: Then you are not comparing your rates with Louisville at all?

Mr. Duncan: No, I have had in mind more particularly Clarksville to compare with ours, because the magnitude of the business is so much less than Louisville, and one more to be compared with ours, the conditions and everything are somewhat similar, that is what I have had in mind. I do not speak for anybody else.

Mr. Connell: Let us get this clear. You say that your rates are made on combination into Louisville plus the rates from Louisville into Bowling Green; you don't know whether the rate into Louisville is satisfactory or no—so you said?

Mr. Duncan: No, I say that the aggregate—the rate through to Bowling Green—is unsatisfactory; our Bowling Green rate from the East is unsatisfactory, from the West also, as also through from Louisville.

304 Mr. Connell: You don't know what part of that rate from the East or from Chicago to Louisville is?

Mr. Duncan: I don't know anything about that.

Examiner Boyle: What is the length of time it takes to go by boat from Evansville to Bowling Green?

Mr. Duncan: About thirty hours.

Examiner Boyle: The same on the return?

Mr. Duncan: Yes sir.

Mr. Examiner Boyle: How long does it take to go from Nashville, do you know—on the Cumberland River?

Mr. Duncan: I think it is near the same distance, I have never traveled it, but I think it is near the same distance, from the mouth of the Cumberland River to Nashville as it is from here.

Mr. Thomas: But the mouth of the Cumberland River is considerably down?

Mr. Duncan: Yes sir.

Mr. Colston: You said that you went back in business in 1905, and have remained in business from that time until now, in the belief, or in the reliance upon some reduction in rates; the Louisville & Nashville Railroad Company have never made any representation to you towards such reduction, have they?

Mr. Duncan: No sir.

Mr. Colston: They didn't induce you to go into business under any promise of that sort, did they?

Mr. Duncan: No sir, certainly not.

Mr. Thomas: I will ask you if you have not been in a fight to try to get them ever since that?

Mr. Duncan: Yes sir.

Mr. Thomas: You took that up with the railroad yourself, and with the State Commission?

Mr. Duncan: Yes sir.

Mr. Thomas: And now we have gone to the Interstate Commerce Commission?

Mr. Duncan: Yes sir.

Examiner Boyle: Do you receive or ship anything to the South or Southeast, to or from the South and Southeast?

Mr. Duncan: We receive some goods from the Southeast.

Examiner Boyle: Where?

Mr. Duncan: Charleston, principally—oysters, that is about all I think of that we get from the Southeast.

Examiner Boyle: Sugar from New Orleans?

Mr. Duncan: Yes sir.

Examiner Boyle: Coffee?

Mr. Duncan: Coffee, from principally, New York.

Examiner Boyle: What do you think of the rates down there—the complaint also attacked rates from and to that territory; have you any particular complaints of those rates?

Mr. Duncan: Well, not specially; it is all included in this high rate of freight that we get from everywhere.

Examiner Boyle: Isn't it from and to that territory that your Louisville rate situation comes in?

305 Mr. Duncan: The Southeast territory?

Examiner Boyle: Yes, isn't that territory that you seek to have the Louisville rates applied from and to, and not the territory north of the Ohio River? I just want to clear up that situation that Mr. Connell is asking about—that has been my understanding.

Mr. Duncan: Repeat the question.

Examiner Boyle: Mr. Connell asked about the Louisville rate. It was never definitely stated exactly what Mr. Duncan's contention was, and I asked him if it was not a fact that it is the traffic from and to the Southeast and South that he attacks the application of the Louisville rate, and not the traffic from and to points north of Louisville?

Mr. Duncan: On goods shipped out of Louisville and out of here.

Mr. Connell: Take the rate from the East to Bowling Green, or to Clarksville and Nashville, I believe you complain of that rate, do you not?

Mr. Duncan: Yes sir.

Mr. Connell: If you knew that the portion of the rate from the eastern point to Louisville was the same, whether the traffic was destined to Bowling Green or to Nashville or Clarksville, you would then have no complaint to make of the rate north of the River?

Mr. Duncan: I would have no complaint to make of any rate so that it puts us on an equal footing with our competitors, now if this rate from the East to Clarksville is lessened into Louisville and then another rate made to Clarksville so as to make the aggregate less than ours, I want the complaint to go where it belongs—I don't know.

Mr. Connell: That is not answering my question.

Mr. Duncan: I beg your pardon. I will try to answer it.

Mr. Connell: Let me make it clear to you. Assuming that the

rate from the East to Louisville is the same whether traffic is destined to Bowling Green, or to Clarksville, or to Nashville?

Mr. Duncan: Yes sir.

Mr. Connell: Would you then have any complaint to make of that portion of the rate applying to the East?

Mr. Duncan: That would be the same?

Mr. Connell: That would be the same.

Mr. Duncan: Yes sir.

Mr. Connell: You would have no complaint to make then?

Mr. Duncan: No sir, not where it is the same.

Mr. Colston: Just one question, to bring out what the examiner said. You don't job in competition with Atlanta, Georgia, or Montgomery, Alabama?

Mr. Duncan: No sir.

Mr. Colston: Nor do you job with Jackson, Mississippi?

Mr. Duncan: No sir.

Mr. Colston: So in so far as the complaint may cover rates from Bowling Green to those points, as compared with Louisville, you have no interest in the matter at all?

306 Mr. Duncan: No sir, none at all.

Mr. Thomas: You as an individual do not?

Mr. Duncan: No sir.

Mr. Thomas: But as a citizen of Bowling Green, and as a member of this club, you do?

Mr. Duncan: I was answering for myself, he directed it to me individually.

Mr. Thomas: There are individuals here who do?

Mr. Duncan: Yes sir.

Mr. Colston: There are individuals here who job in competition with Atlanta, in comparison to Louisville?

Mr. Duncan: No sir, I don't state that.

Mr. Thomas: How many jobbing houses in your line of business are here present?

Mr. Duncan: Three.

Mr. Connell: You sell goods between here and Louisville in competition with the Louisville jobbers, do you not?

Mr. Duncan: For 24 miles is the extent, past the junction.

A. S. HINDES, called as a witness, being duly sworn, testified as follows:

Direct examination:

Mr. Thomas: What is your age, residence and occupation?

Mr. Hindes: I am thirty-eight years of age, General Merchandise Brokerage business, representing several different Grocery houses.

Mr. Thomas: How long have you been in the Merchandise brokerage business?

Mr. Hindes: Since 1907.

Mr. Thomas: What business were you in prior to that time?

Mr. Hindes: Wholesale Grocery business.

Mr. Thomas: Here in Bowling Green?

Mr. Hindes: Yes sir.
Mr. Thomas: How long were you in that business?
Mr. Hindes: Since 1895.
Mr. Thomas: You went out in 1907?
Mr. Hindes: Yes sir.
Mr. Thomas: Mr. Hindes, what was the condition as to freight rates—without going into detail—during the years that you undertook to establish and maintain a grocery jobbing house here?
Mr. Hindes: The rates at that time, all good inbound to Bowling Green, were such that we could only compete with Louisville, Nashville and Clarksville on what we call listed goods, that is, where the manufacturer paid the freight to this point; on goods where we paid the freight ourselves, it was simply prohibitory; we could not go up against any of those houses, only within a circumscribed territory, you might say twenty miles from Bowling Green, then we couldn't go on the railroad points, we had to have a wagon trade to get in with them.

307 Mr. Thomas: That was your experience during the years that you were in it?
Mr. Hindes: Yes, sir, invariably.
Mr. Thomas: Do you believe that a merchandise brokerage grocery or dry-goods, or a wholesale business of any kind can be met with success with the traffic carrying the per cent. of burden of inbound rates?
Mr. Hindes: The first part of the question, as to brokerage business, that is a different thing, but so far as doing business from this end of the line, that is, maintaining a wholesale business from this end of the line, a certain volume of business can of course be done all right, but you can never amount to anything to call yourself a wholesale jobbing house under the present conditions?
Mr. Thomas: What houses do you represent now?
Mr. Hindes: Parsons & Scovel of Evansville, Norton & Kerr, of Louisville, Joseph Denunzio Fruit Company, Johnson Packing Company, of Cincinnati, Austin, Nichols Co., of New York—and the others where the freight wouldn't amount to anything, because it is a different proposition there on heavy freight shippers.
Mr. Thomas: Your main business comes from Evansville, does it not?
Mr. Hindes: Yes sir.
Mr. Thomas: How is that brought here?
Mr. Hindes: It is brought entirely by boat.
Mr. Thomas: What rates do they charge you on the boat?
Mr. Hindes: We get a 20 cent unclassified rate, that is grocery rate, covering everything practically that comes in less than cars, cars I get a 20 cent rate.
Mr. Thomas: Cars, is maximum 20?
Mr. Hindes: Yes sir, that is groceries.
Mr. Thomas: All the groceries you handle?
Mr. Hindes: Yes, from Parsons & Scovel, from Nashville, the principal, and main part of my business.
Mr. Thomas: Is that store-door delivery?

Mr. Hindes: Yes sir, store door delivery.

Mr. Thomas: When you were in business did you find that Clarksville and Nashville had any undue preference over Bowling Green?

Mr. Hindes: Yes, I always thought so.

Mr. Thomas: Couldn't meet them on the rates they had?

Mr. Hindes: Not but half way, you couldn't begin to meet them.

Mr. Thomas: Are you familiar with the Green and Barren Rivers?

Mr. Hindes: Yes sir, very.

Mr. Thomas: Been over it many times, or few?

Mr. Hindes: Yes sir.

Mr. Thomas: Continuous throughout the year?

Mr. Hindes: Yes, sir, practically; I have known it to be frozen up ten days out of a year; I have only known it to be once since I can remember, that it was interrupted.

308 Mr. Thomas: Do you think there is any reason why Nashville or Clarksville, situated on the Cumberland, with traffic only six or seven months in the year, should have any preference in freight rates, considering the river as an element, over Bowling Green?

Mr. Hindes: Not and considering the river, no sir.

Mr. Thomas: Do you know of any reason why they should have any preference on freight which goes by Bowling Green?

Mr. Hindes: I do not see why Clarksville or Nashville should have any preference over Bowling Green, no sir.

Mr. Thomas: Were you in business when the Steamer Sun was in operation?

Mr. Hindes: Yes, sir.

Mr. Thomas: Did you use that boat?

Mr. Hindes: Yes sir.

Mr. Thomas: How were freight rates cut by the Evansville & Bowling Green Packet Company while the Sun was in operation?

Mr. Hindes: I couldn't say exactly, but as I remember it, there were no stable rates at all, no rates that would be maintained by the Evansville & Bowling Green Packet Company at that time.

Mr. Thomas: Most any kind of rates to get the business?

Mr. Hindes: Yes, sir.

Mr. Thomas: And the Sun went out of business?

Mr. Hindes: Yes, sir, and at that same time the L. & N. reduced their rates, that is, the rail rates, from Evansville to Bowling Green, materially.

Mr. Thomas: And after the Sun went out, the railroad rates went up, didn't they?

Mr. Hindes: Yes, went back to the—in fact there was a rate agreed on; the Bowling Green Packet Company came to the merchants of Bowling Green, and had a rate that they would maintain, and as a compromise, they agreed on it, and this rate has been in effect ever since.

Mr. Thomas: On the boat rate?

Mr. Hindes: Yes sir.

Cross-examination:

Mr. Colston: Are you sure that the rates from Evansville to Bowling Green were reduced?

Mr. Hindes: The rail rate?

Mr. Colston: Yes, from Evansville, not from Louisville?

Mr. Hindes: Yes, from Evansville to Bowling Green.

Mr. Colston: Please state the amount of this reduction?

Mr. Hindes: I couldn't give you that positively; it has been seven or eight or nine or ten years ago; but I know the rates were reduced, because I made shipments at that time.

Mr. Colston: What commodity did you ship on which the rates were reduced, or classes?

Mr. Hindes: I cannot give you the information positively there.

Mr. Goodwyn: I would like to ask Mr. Hindes a question. Mr. Hindes, I do not know that it makes any particular difference, but I would, if I could, like to get this Sun obscurity cleared up a little bit. You say the citizens of Bowling Green made an agreement with the Evansville & Bowling Green Packet Company?

309

Mr. Hindes: Who made an agreement?

Mr. Goodwyn: The merchants of Bowling Green?

Mr. Hindes: No formal agreement; they submitted a rate and wanted to know if it was satisfactory; it was better than they had been making before, and as the Sun was out of business, we had to be satisfied.

Mr. Goodwyn: Was that rate the rate that the Sun established when it came into the traffic?

Mr. Hindes: No sir, it was a higher rate.

Mr. Goodwyn: How much higher?

Mr. Hindes: I don't know just how much higher; these things are all hazy to me; but it was a higher rate than the Sun maintained any time during its existence here.

Mr. Goodwyn: That was the 20 cent general class rate to which you have just alluded, I believe?

Mr. Hindes: That 20 cent general class rate was the rate given us after the Sun had gone out of business; I don't remember what the rate was before.

Mr. Goodwyn: Do you remember or know anything about an agreement made by anybody on behalf of the citizens of Bowling Green?

Mr. Hindes: Mr. Edgar Greer, of Bowling Green, and myself, and Mr. Raz Porter, I think, we met with the officials of the L. & N. Railroad Company, in the City Hall; that rate was given us at 20 cents, and we submitted it to the Bowling Green merchants, believing that it was the best that we could possibly do, that it was satisfactory if they would maintain that rate; and they have maintained that, with the exception of the transfers.

Mr. Goodwyn: For how long a time was the agreement made?

Mr. Hindes: I don't remember that.

Mr. Goodwyn: Who signed the agreement on behalf of the Bowling Green people?

Mr. Hindes: I don't remember that.

Mr. Goodwyn: Who signed it on behalf of the Evansville & Bowling Green Packet Company?

Mr. Hindes: Mr. Wilkerson was present; I don't know whether he signed it or not.

Mr. Goodwyn: What officials or representatives of the L. & N. were present?

A. No one, unless it was Mr. Wilkerson.

Mr. Goodwyn: When did he represent the L. & N.?

Mr. Hindes: I don't know, he was there at the time, trying to get the rates adjusted and settled all around; I cannot say that he was representing the L. & N. any more than the boat company; he was very much interested in getting the rate settled.

Mr. Goodwyn: Hasn't he represented the boat company?

Mr. Hindes: I don't know that he *was*; I don't know about
310 that.

Mr. Thomas: When you went to see anything about the boat business you would go to see him.

Mr. Goodwyn: I am trying to find out all I can about it. Unfortunately it don't seem that I can do it. Most of them have forgotten.

Mr. Hindes: We went to see him, at the time, my impression was that Capt. Howell was there; he was a representative of the L. & N. Railroad.

Mr. Goodwyn: Was he the representative of the Packet Company?

Mr. Hindes: He was president of the Packet Company.

Mr. Goodwyn: Was he here as the representative of the Packet Company? Or as the official representative of the L. & N.?

Mr. Hindes: I don't know sir, he was here at the time; I suppose he was.

Mr. Goodwyn: Was Mr. Cornick also here?

Mr. Hindes: I am not sure that he was; I think Mr. Howell was here.

Mr. Goodwyn: Those rates have been continued here, right on to this day?

Mr. Hindes: Right on, except when there is transfer, and five cents for transfer.

Mr. Goodwin: Ever since 1901?

Mr. Hindes: Yes sir, about that.

Mr. Thomas: You say the Sun was closed at that time?

Mr. Hindes: The Government closed the locks at that time, and they added the expense of the transfer, they generally made five cents a hundred in cases of any rate they might make, for instance, our rate was 20 cents a hundred, and during the transfer it was 25.

Mr. Connell: Do you have any complaint to make against the rates north of the Ohio River?

Mr. Hindes: Now, in the business I am in the rates do not affect me at all; I am all right, I am shipping from Evansville to Bowling

Green, and I have no fight at all to make personally on the rates. This proposition is just for Bowling Green in general.

Examiner Boyle: What do you ship?

Mr. Hindes: General merchandise; everything in the grocery line.

Examiner Boyle: Do you represent some jobbers over there?

Mr. Hindes: Yes sir, that is my present position. The testimony I am giving is as a jobber, that is the position I occupied here years ago. You see under the present conditions I really am a broker.

Examiner Boyle: Do you represent any Evansville firm as a broker, now?

Mr. Hindes: Yes sir, as a brokerage business, I represent different accounts. I represent no particular house, but one of the main accounts I have is a jobbing grocery house—Scovel & Company.

Examiner Boyle: These Austin Nicol shipments from New York, do they generally come in car loads?

Mr. Hindes: No sir, they come in car loads to Louisville, and ship from there.

311 Examiner Boyle: Louisville acting as the distributing point?

Mr. Hindes: Yes, sir, I have some instances, cheese shipment, in the last few days Austin & Nicols guaranteed me a rate to Louisville of 35, and the through rate to Bowling Green is 42 in excess of that; for that 35 a hundred to Louisville plus 28 to Bowling Green, it would have been all right, but their charge to Bowling Green is 82 cents a hundred.

Examiner Boyle: Where do they get the rate of 52 to Louisville?

Mr. Hindes: That is the local rate to Louisville.

Examiner Boyle: What is the rate from Louisville?

Mr. Hindes: They guaranteed me a rate of 35.

Examiner Boyle: What is the published rate?

Mr. Hindes: From Louisville to where the cold storage plant is, I cannot say positively what it was, but the way they charged me it is 68; I couldn't say positively; I know the through rate of 1900 pounds was over the rate guaranteed by the Austin Nichols Company, about $4.00 plus excess on the shipment.

Examiner Boyle: That was really due to the fact that Austin & Nichols were figuring on a wrong rate to Louisville.

Mr. Hindes: They knew what the rates were, they were figuring on distributing by car load from Louisville, but this shipment came straight through to Bowling Green from their warehouse in Loweville. I don't know just what part of the State that is in.

B. G. DAVIDSON, Called as a witness, being duly sworn, testified as follows:

Mr. Thomas: Where do you live?

Mr. Davidson: My home is in Glasgow; I am living in Bowling Green now.

Mr. Thomas: You have moved to Bowling Green, have you not?

Mr. Davidson: Yes sir.

Mr. Thomas: What business are you engaged in?
Mr. Davidson: Wholesale Grocery business.
Mr. Thomas: Have a house here?
Mr. Davidson: Yes sir.
Mr. Thomas: What is the style of the firm?
Mr. Davidson: Davidson Brothers.
Mr. Thomas: Have they houses anywhere else?
Mr. Davidson: Yes sir.
Mr. Thomas: Where?
Mr. Davidson: Glasgow, Burnside, Somerset, Lebanon, Junction City, then we have union points at Monticello, Tompkinsville and Fountain Run, and wholesale hardware and produce.
Mr. Thomas: How long have you been engaged in that business?
Mr. Davidson: Why, my oldest brother has been in it about 24 years, before. There are four of us in the business—three younger.
Mr. Thomas: And you have started a house at Bowling
312 Green?
Mr. Davidson: Yes sir.
Mr. Thomas: Have you made any investigation of the freight rate situation in Bowling Green?
Mr. Davidson: Yes sir.
Mr. Thomas: Bowling Green rates are based, on inbound freight from the East, on the rate to Louisville plus the rate to Bowling Green?
Mr. Davidson: Louisville combination.
Mr. Thomas: How are the rates from the South and Southeast?
Mr. Davidson: On the Nashville combination, mostly.
Mr. Thomas: With the present situation, with Nashville, with the rate she has, and Clarksville the rate she has, and Louisville the rate that it has, and Evansville the rate it has, how about the territory Bowling Green can operate in, as to wholesale grocery or jobbing houses?
Mr. Davidson: Well, Bowling Green naturally could not go against them and meet them on nothing like half rate.
Mr. Thomas: The territory limited?
Mr. Davidson: Yes, very limited.
Mr. Thomas: Situated as Bowling Green is, with continuous river transportation throughout the year, ought or not Bowling Green have a competitive rate and be made a basing point?
Mr. Davidson: Certainly.
Mr. Thomas: Is there any reason why Nashville or Clarksville should have better inbound freight rates than Bowling Green?
Mr. Davidson: No sir.
Mr. Thomas: Do you know of any instances where freight is hauled by Nashville to Louisville or to the Southeast, very much cheaper than to Bowling Green?
Mr. Davidson: Yes sir.
Mr. Thomas: Give an example of that.
Mr. Davidson: Well, one rate that we have up now; we have bananas in cars, we have applied to the L. & N.—Mr. Goodwyn, for a rate on bananas in car lots from New Orleans to Bowling Green.

Also had it up with him for Glasgow. The rate on bananas, car lots, from New Orleans to Nashville, is 36 cents; to Louisville, is 39 cents; to Bowling Green it is 74 cents. We have applied for those rates—that is, for a reduction, and have gotten turned down about three times—about three times for Glascow and once for Bowling Green.

Mr. Thomas: Where does that shipment originate now?

Mr. Davidson: New Orleans.

Mr. Thomas: What can they be shipped to Nashville —, you say?

Mr. Davidson: 36; 39 to Louisville; 74 Bowling Green; 79 to Glasgow. We also have a rate on oranges from Florida points.

Mr. Thomas: Give the comparison as to that?

Mr. Davidson: The rates on all Florida oranges are based on the Jacksonville rate, and it is based on an eighty pound crate; per crate, from Jacksonville to Nashville, is 42; to Louisville is 46; to Bowling Green is 57.2; based on the Nashville combination of 42 to Nashville plus a rate of 19c. equal to 15.2 a box, making the rate from
313 Jacksonville to Bowling Green 57.2 a box. The rate to Louisville is 46—114 miles longer haul, and those are items that are not based on water competition at all, in the first place they take a high rate; the rate on bananas from New Orleans to Louisville is 39, while the rate on sugar is 17—twice, more than twice.

Mr. Examiner Boyle: How is that?

Mr. Davidson: Taken in comparison with an item like sugar, is 17 cents from New Orleans to Louisville, the rate on bananas is 39; it is, you see, more than twice. It is not an item which can be handled by water; it is perishable goods.

Examiner Boyle: You would not compare sugar and bananas?

Mr. Davidson: I am simply comparing that it is an item that is based on an all rail shipment, I am comparing that rate of New Orleans to Louisville, a distance of 114 miles longer haul, coming right through Bowling Green, which doubles practically put off here, from 39 to 74.

Mr. Thomas: What territory does this business you represent reach?

Mr. Davidson: All this way through here practically.

Mr. Thomas: From where?

Mr. Davidson: From down this way. If we can get some rates in here that will put us in competition with Clarksville and Nashville, we will have a territory of about 200 miles straight through the State.

Mr. Thomas: And the various branch houses?

Mr. Davidson: Yes sir, Our Burnside, Somerset and Junction City houses are on the Q. & C. Bowling Green, Glasgow and Lebanon are on the L. & N.

Mr. Thomas: Do you all not ship or handle a great quantity of material or freight in these various houses?

Mr. Davidson: Yes sir.

Mr. Thomas: Have you made any investigation in regard to making connection with the railroad down the river, and putting a boat in for yourselves, to see whether that could be done or not?

Mr. Davidson: Yes sir.
Mr. Thomas: On this river?
Mr. Davidson: Yes sir.
Mr. Thomas: To what point?
Mr. Davidson: We had the matter up with the officials at Evansville. When I first came to Bowling Green, Mr. Wilson wanted to take me down to see what we could do in the way of rates by boat. About the time we started we had a letter from Capt. Howell, if he would meet us there, we got a telegram from him saying that he was sick and was going to Chicago to have an operation performed, but his Secretary, Mr. Cornick, would go over the matter with us. We went to see Mr. Cornick, also Capt. Williams, the Secretary of the Boat Company. Mr. Cornick is the Secretary of Mr. Howell, and Mr. Howell is the Assistant General Agent of the L. & N. at Evansville. In taking up these rates——
Mr. Thomas: I didn't catch that. Mr. Williams is what?
Mr. Davidson: Secretary of the Boat Company.
314 Mr. Thomas: And Mr. Cornick is the Secretary of Mr. Howell, of the L. & N.?
Mr. Davidson: Yes, sir, he is, also Capt. Williams, I don't know whether he is secretary or vice president. Can you tell me, either of you gentlemen?
Mr. Goodwyn: I think it is Superintendent.
Mr. Davidson: Any way, he is an officer of the Boat Company, and Mr. Cornick the Secretary of the Boat Company.
Mr. Goodwyn: That is right as to Mr. Cornick; I am not sure that it is right as to Capt. Williams.
Mr. Davidson: In taking up these rates with Mr. Cornick—there is evidently a close connection between the boat and the L. & N., because every time we asked for a rate, he would have his clerk bring in an L. & N. rate tariff to see what that was. I told him "I am down here to get rates from a boat, and not from the L. & N." He laughed. That is enough said, you know! We also took the matter up with Mr. Downing, Assistant General Agent of the I. C. at Louisville. He wrote us that he would be very glad to take up the matter, and would like to get into Bowling Green. I went up to see him. I was in Louisville, and went around to see him, and he took down a few facts in the case—took it up with the I. C. at Chicago, the head office, and he come back and said that the L. & N. rates were very low, in fact he could not figure anything that would be as good as the L. & N. rates into Bowling Green.
Mr. Thomas: On what?
Mr. Davidson: On the items I mentioned to him.
Mr. Thomas: On the railroad or river?
Mr. Davidson: On the railroad to Rockport and then by boat into Bowling Green. Which made it very plain to me that the L. & N. and I. C. were pretty close together on the river.
Mr. Thomas: So you did not get your boat in?
Mr. Davidson: We did not get it in yet, we haven't.
Mr. Thomas: Will Bowling Green ever amount to anything and can it be made very extensive, with the present condition of freight

rates, considering the fact that Nashville, Clarksville and Louisville, and every city surrounding, have such rates?

Mr. Davidson: No sir. That is, they can be limited to a small trade around here, but when it comes to competing with Evansville and Louisville and Nashville, we cannot meet them on half way ground.

Mr. Thomas: You cannot carry the burden of the incoming freight rate, and cannot meet them?

Mr. Davidson: No sir. For instance, on an item like salmon, or evaporated fruits, from the Pacific Coast, places like Louisville or Evansville and places like that, are based on a transcontinental rate, which takes the same rates; at this point, Bowling Green has to be based on the rate to Louisville plus the rate from Louisville to Bowling Green, which naturally gives them the inside.

Mr. Thomas: That is a preference in favor of those places?

Mr. Davidson: Certainly.

Mr. Thomas: In your line of business—it is true in some,
315 I don't know whether it is in your business or not—if you want to ship goods from E-town (Elizabethtown), for instance, don't you have to bear the rates plus the rate back to E-town?

Mr. Davidson: If we are shipping goods from here to E-town?

Mr. Thomas: Yes sir.

Mr. Davidson: I don't know whether the rate from Bowling Green is higher to E-town than to Louisville, I don't see why it should be much different from here; they have no competing line.

Mr. Thomas: The question was, do you in shipping goods from here to E-town, do you know whether or not you bear the Louisville rate from here to Louisville, and also the price from Louisville back to E-town?

Mr. Davidson: We haven't sold anything in E-town from here. I don't know how that is.

Examiner Boyle: Where is that?

Mr. Thomas: Twenty or forty miles south of here.

Mr. Davidson: We have another item here, nails and wire.

Mr. Thomas: Turn to that item, nails and wire.

Mr. Davidson: The rate from Pittsburgh to Louisville is 18; the rate from Louisville to Nashville and Clarksville is 10; and the rate from Louisville to Bowling Green is 17½; they charge Bowling Green 17½ higher for a 72 mile shorter haul.

Mr. Thomas: Running in the same direction?

Mr. Davidson: In the same direction and on the same line, the shorter being included within the longer.

Examiner Boyle: That higher charge, however, is altogether south of the river, isn't it?

Mr. Davidson: Yes sir, it is based on Louisville rates. In fact the rates into Louisville; it is not that so much where the difference comes in, it is the rate from Louisville south, or from Nashville north, which they insist is the basing point; whilst Nashville and Clarksville have through published rates. This rate, for instance, is based on nails from Pittsburgh, on 18 cents plus 10 to Nashville from

Louisville, but they publish a rate through there of 28, while they add 17½ to Bowling Green, which makes 35½.

Cross-examination:

Mr. Colston: Who competes in this territory of 200 miles back that you say could be served by Bowling Green if they were made a basing point?

Mr. Davidson: I didn't say that we worked two hundred miles from Bowling Green; I said we covered that with our different houses that I named a while ago.

Mr. Colston: You haven't any houses at Nashville or Clarksville?

Mr. Davidson: No sir.

Mr. Colston: When did you locate your house in Bowling Green?

Mr. Davidson: About two months ago. We have sold some stuff down this way from Glasgow, but have been under the same conditions up there that we are at Bowling Green—cornered by
316 the L. & N.

Mr. Colston: Do you think Glasgow ought to be made a basing point also?

Mr. Davidson: No sir, I don't think it ought to be on the same basis as Bowling Green, but it is customary on jobbing points in a radius of having approximately the same rates; for instance, we ought to have rates on bananas from New Orleans, say at Glasgow Junction, the Louisville rate plus a reasonable rate from Glasgow Junction into Glasgow.

Mr. Colston: In other words, you think the jobbing point should be given a line of rates because it is a jobbing point, or so done because it is chosen by the railroad?

Mr. Davidson: You know that all rates are based on water rates, to a great extent. That is, of course, the main thing. That is what brings them to the terms. And Glasgow is not in the same position as Bowling Green.

Mr. Colston. And still you think Glasgow ought to be given jobbing rates?

Mr. Davidson: We have some rates in there now; they are not anything like Louisville or Nashville or Clarksville, I think we are held up there, yes sir.

Mr. Colston: You think Glasgow ought to have better rates than Glasgow Junction, for example?

Mr. Davidson: On car shipments; we handle stuff in cars altogether, and there is no jobbing at Glasgow Junction.

Mr. Colston: Just answer the question. Do you think Glasgow ought to have better rates than Glasgow Junction?

Examiner Boyle: What is the use of going into Glasgow?

Mr. Colston: I just want to ask that question, if it was his idea upon it, he says that rates should be granted Bowling Green, that it is a jobbing point, that somebody can arbitrarily say that it is a jobbing point.

Mr. Colston: I simply mentioned that. I thought somebody mentioned about Glasgow, that on an item like bananas or oranges or

anything moving over the L. & N. we ought to have as good a rate at Glasgow Junction as they haul it on to Louisville for, plus a reasonable rate from Glasgow Junction to Glasgow.

Mr. Colston: Take the rate from Louisville to Glasgow, do you think Glasgow ought to have a better rate than Glasgow Junction?

Mr. Davidson: No, I do not; I say that we were willing to pay a reasonable rate from Glasgow Junction to Glasgow.

Mr. Colston: The sole reason, then, why Bowling Green should be made a basing point is water competition—or, what other reasons are there?

Mr. Davidson: The main reason is you are discriminating. You take a town like Bowling Green, you are discriminating between Bowling Green and Clarksville and Nashville. How do you expect Bowling Green to get out and compete with those people, when they have less rates?

317 Mr. Colston: Upon what reason do you base your claim that Bowling Green should be made a basing point other than the existence of water competition in the Green and Barren Rivers?

Mr. Davidson: Well, it is a city on the main stem of the L. & N. between points like Louisville and Nashville; it has got water navigation the year around; it is a town of approximately 12,000; it is naturally a good distributing point. The natural location of the city makes it a good distributing point, and that when you haul stuff by a point to a point 72 miles further and charge a less rate, it is discrimination.

Mr. Colston: Now eliminating the question of water competition, which one of those conditions do not apply to the city of Franklin, Kentucky, as well as to Bowling Green, Kentucky; it is a city on the main stem, it is a fair sized town, the merchants would probably contend that it is a good distributing point.

Mr. Davidson: Well, sir, if they had the jobbers at Franklin, I think you would be discriminating, in fact I know you would be discriminating to charge more freight for that point than you would haul it through to Nashville for.

Mr. Colston: I don't want to ask an argumentative question, I am not arguing the question at all; I am not seeking to do that.

Mr. Davidson: Let me ask you a question.

Mr. Colston: But I am asking you now, this question. I want to find out upon what reason, if there be any reason, you base the claim that Bowling Green should be made a basing point, other than the existence of water competition, in the Green and Barren Rivers? Now I don't want to argue as to what is just or unjust to Bowling Green as compared to some other.

Mr. Thomas: That is the foundation of the complaint, may it please the Court. That is what we are here for now, to prove that Bowling Green ought to have as good rates as Nashville or Clarksville.

Examiner Boyle: Isn't it a fact that you do not care where the rate bases?

Mr. Davidson: We want to be in line with those points, we don't want to be used to figure on a Louisville or Nashville combination.

We do not want to pay a higher rate on goods moving from New Orleans than Louisville does, 114 miles further on.

Mr. Colston: Then the sum and substance of the complaint is you want lower rates because Nashville and Clarksville have lower rates, is that the reason, is that the fact?

Mr. Davidson: Well, we have to compete with them, certainly.

Mr. Colston: That is the reason, is it?

Mr. Davidson: That is one reason.

Mr. Colston: What other reasons? I simply want to get the reasons stated. I didn't want to make an argument, and I don't want you to make an argument. I simply want the reasons that you claim Bowling Green should be made a basing point?

Mr. Davidson: Because we have three jobbing houses here, and should be able to compete with Louisville, Nashville and Clarksville, with the right kind of rates.

318 Examiner Boyle: What difference does it make to you where the rate bases as long as you get a rate that puts you on a parity with Clarksville and Nashville on the one hand and Louisville on the other?

Mr. Davidson: The reason, coming back to this matter of rates from the Pacific coast to the East, Louisville and Evansville, and those points have a rate say for instance 70 cents on car lots, Bowling Green is based on the Evansville or Louisville rate plus the rate down here. Now that naturally puts us where we cannot go back anything like half way.

Examiner Boyle: Does that traffic move down through Louisville and into Bowling Green?

Mr. Davidson: It comes across one of the direct lines, through St. Louis, right over the L. & N., they could go over this way, some of it does, some of it goes over the Henderson route. There is quite a good deal of stuff moves from here to St. Louis.

Examiner Boyle: To Louisville?

Mr. Davidson: Yes sir.

Examiner Boyle: And on that traffic you want the Louisville rate?

Mr. Davidson: Well, to be put on a basing point with them in order to compete with them.

Examiner Boyle: This basing point is not exactly understood by the witnesses that have been testifying about it.

Mr. Davidson: You understand that a point like Bowling Green, that has got river facilities, which ought to put it in a first class jobbing point, should not be hampered by a rate added on to some other points, and be in line to compete with them.

Mr. Thomas: If we can get a rate we can compete with them on, it don't matter where we get it, so we get it.

Examiner Boyle: That is my point, that all you want is the Louisville rate on certain traffic, and the Nashville and Clarksville rates on the other; that is, if the Louisville rate would be like it was down to Bowling Green, say, or if the blanket or Louisville rate applied to Bowling Green on traffic coming south and the Nashville

and Clarksville rate applied to Bowling Green on the traffic moving north?

Mr. Davidson: The Louisville rate on traffic moving from the west should be applied, we think, at Bowling Green.

Examiner Boyle: When I say North and South, I mean the relation of Bowling Green to Louisville and to Clarksville and Nashville on the other.

Mr. Davidson: On stuff like nails and wire moving from Pittsburg, we would not expect as cheap a rate at Bowling Green as they have at Louisville, but we would expect as good a rate as Nashville. The rate from Louisville is 10 on nails and wire, where it is 17½ to Bowling Green,—72 miles further on.

Examiner Boyle: You don't care how the rates base so you get them?

Mr. Davidson: Only once they come one way and cut us, and on the other come and swipe us again. On that banana rate, how
319 can we compete with Louisville and Nashville, when they haul bananas on the cars a distance, right through to Louisville, of 114 miles further for 39 cents, and charge Bowling Green 74. That is the most unreasonable rate, and the one we took up with the L. & N. officials, and got turned down on, they saying no, we cannot do nothing on that.

Examiner Boyle: How many cars of bananas do you handle from here?

Mr. Davidson: We have gotten in, since we have been here, I think it is four or five cars.

Examiner Boyle: In what length of time?

Mr. Davidson: In that time, about a month and a half.

Examiner Boyle: How many would you think you could get in on say the Louisville rate or the Nashville rate?

Mr. Davidson: If we were put in line with Louisville and Nashville, Bowling Green, which is the end of a division of the L. & N., every morning three local freights leave here, one down the Memphis branch, one down the main stem, one up the main stem, Bowling Green ought to be made, we ought to sell all the bananas and all that stuff down in this part of the country.

Examiner Boyle: When you went off on the Memphis branch, wouldn't you come in competition with Memphis?

Mr. Davidson: Yes, but if we had the rates we could compete with them all right; Memphis is about on a line with Nashville.

Examiner Boyle: Do Nashville and Memphis compete in selling bananas?

Mr. Thomas: They are not on the same line.

Examiner Boyle: How close do they get together?

Mr. Davidson: Memphis rates, I don't know, exactly what they are, but I will state that compared with other rates they are about the same.

Examiner Boyle: These bananas going to Louisville, do they come through in train loads?

Mr. Davidson: They come through in trains—not necessarily train loads.

Examiner Boyle: Train loads, I mean?

Mr. Davidson: Let me say a word on that banana business. In looking over the rate just before I left Glasgow, the division on that. I was arguing that there was an overcharge up there one day on a car, and the agent was showing me where it come in, and this car of bananas in question was hauled over the I. C. to Milan, Tennessee, a distance I don't know how far, but a short distance compared to New Orleans; the rate from New Orleans to Milan, Tennessee over the I. C. was 21 cents; from Milan, Tenn., to Glasgow was fifty-eight cents. Well, of course it would be, the rate to Bowling Green is 5 cents less than Glasgow—74. They charged 53 to Bowling Green, which Milan is just a short distance down here—just to show the unreasonableness of the discrimination between points like Bowling Green.

Examiner Boyle: I didn't mean to break in on your cross-examination.

320 Mr. Colston: I had finished. All I wanted to do was to get a statement from the witness as to what he considered the reasons for establishing a basing point.

Mr. Connell: You said, I believe, that this banana rate from New Orleans to Bowling Green was entitled to a great deal of consideration, didn't you?

Mr. Davidson: Certainly.

Mr. Connell: Can you tell me why it has not been set out specifically in this complaint?

Mr. Davidson: Because this was drawn up before we came into Bowling Green.

Mr. Connell: Then the Bowling Green Business Men's Protective Association did not know anything about this discrimination on the bananas until you came here?

Mr. Davidson: No sir, they didn't handle them in cars in Bowling Green before.

Mr. Connell: Never handled them in cars; how were they handled?

Mr. Davidson: Shipped in here from Nashville and Louisville, in L. C. L. shipments.

Examiner Boyle: Whom do you sell them to?

Mr. Davidson: We sell them to merchants. We do a strictly wholesale business. We don't sell to anybody but merchants.

Examiner Boyle: You buy a car load of bananas, yourselves?

Mr. Davidson: Yes sir; we buy them right from the track in New Orleans.

Examiner Boyle: When they come here to you, do they come in a solid banana train?

Mr. Davidson: Sometimes solid banana trains come through here; I noticed some here lately.

Mr. Goodwyn: From New Orleans?

Mr. Davidson: Yes, I don't know where they transferred, they come through Bowling Green, I understand that the I. C. gets most of the banana business, because they own the docks of the United Fruit Company, where they unload their stuff.

Mr. Goodwyn: If they run them through here, how many cars do they have, ordinarily, in the train?

Mr. Davidson: I don't know exactly; we are right down there by the main line, and you can tell—you don't know exactly whether all those cars are loaded with bananas or not, but those tropical fruit cars, bananas and such as that, that is what they are usully shipped in.

Examiner Boyle: They have to run some as banan- trains with six cars.

Mr. Goodwyn: If we do haul any solid trains at all with bananas, they come from Mobile.

Mr. Davidson: Mobile is one of the other points we ship from. We have some cars in Glasgow from Mobile. The rate is three cents less from Mobile than it is from New Orleans.

Mr. Goodwyn: To Bowling Green?

321 Mr. Davidson: Yes, that is to Glasgow, I suppose, it is to Bowling Green.

Mr. Goodwyn: How about the rates from Mobile to Louisville and Nashville?

Mr. Davidson: I suppose it is three cents under the New Orleans rate. I suppose that is the way it is based.

Mr. Goodwyn: The same?

Mr. Davidson: Well, it is published at Glasgow, 76 from Mobile, 79 from New Orleans.

Mr. Connell: To get back to this rate on nails and wire from Pittsburg, you said, I believe, that the rate from Pittsburg to Bowling Green was made up, 18 Louisville and 17½ Bowling Green?

Mr. Davidson: Yes sir.

Mr. Connell: Making the through rate 35?

Mr. Davidson: Yes sir.

Mr. Connell: The rate from Clarksville and Nashville, 18 Louisville, and 10; then you have no complaint against the rate north of the Ohio River?

Mr. Davidson: No sir.

Mr. Connell: Have you on any other commodity?

Mr. Davidson: No sir, we have no complaint North of the Ohio River, unless that division is made some way in making a through rate, of course that is up to the railroads.

Mr. Connell: Do you handle any Irish potatoes?

Mr. Davidson: Yes sir.

Mr. Connell: Where do you get your potatoes, mostly?

Mr. Davidson: From Michigan, Wisconsin and Minnesota points.

Mr. Connell: That is the upper peninsula of Michigan, or lower?

Mr. Davidson: Around through Wisconsin; we get them around Portage, Michigan, Belton, and other points there, all the potatoes we have handled into Bowling Green since we have been here, we shipped to Evansville and brought over by the boat.

Mr. Connell: You don't buy any potatoes from Chicago, do you?

Mr. Davidson: Yes, we buy from a Chicago firm, one of the biggest potato people that is located there, and they have warehouses all over Michigan and Wisconsin.

Mr. Connell: But the potatoes are shipped direct?

Mr. Davidson: Direct from the warehouses.

Mr. Connell: You don't pay any local rates on potatoes from Chicago?

Mr. Davidson: No sir, they are usually all shipped from Michigan points. There is another item on the list here.

Mr. Connell: Just one minute on these potatoes; do you know what are the rates from Michigan, Minnesota and Wisconsin on potatoes?

Mr. Davidson: It is about 20 cents from up in there to Ohio River points. The rate to Louisville is one cent less than it is to Evansville from points up through Michigan there; in fact, we buy a good many of our potatoes delivered at Louisville or Evansville, and they usually figure it one cent less per bushel at Louisville.

322 Mr. Connell: Haven't you got that turned around—the rate to Louisville is one cent higher than Cincinnati or Evansville?

Mr. Davidson: I know we bought a couple of cars just a short time back, the same time, from a party, and he charged us the one car that went through Louisville went to Glasgow and the car that went to Bowling Green came through Evansville, and the price was one cent less delivered Louisville than it was on the car delivered to Evansville. I understand the rate is just a little lower to Louisville than it is to Evansville.

Mr. Connell: Don't you know that the published tariff rate to Louisville is one cent higher than the rate to Cincinnati or Evansville?

Mr. Davidson: I don't know that that is a fact.

Mr. Graham: Yes, that is the fact; the rate is one cent higher to Louisville than it is to Cincinnati.

Mr. Davidson: Why do they figure that difference?

Mr. Graham: I don't know sir.

Mr. Davidson: This car was bought from the Chicago broker.

Mr. Connell: That may be an undercharge.

Mr. Davidson: That may be the rate to the Ohio River point.

Mr. Connell: Do you know the local rate on potatoes from those points in Michigan and Wisconsin to the Ohio River is the same as that portion of the through rate to Bowling Green?

Mr. Davidson: I suppose it is; I don't know.

Mr. Connell: Well, as a matter of fact, it is.

Mr. Davidson: I suppose it is.

Mr. Connell: In that case you would have no complaint of the rate north of the river?

Mr. Davidson: No sir, our complaint is from points that we are based on—Louisville and Nashville, mostly.

M. H. CRUMP, was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Thomas: You live in Bowling Green?

Mr. Crump: Yes sir.

Mr. Thomas: How long have you lived in Bowling Green?

Mr. Crump: I have been here about thirty-five years or more.

Mr. Thomas: What is your occupation?

Mr. Crump: I am doing now a good deal of work as consulting engineer, doing building engineering and economic geology, at present; also I represent the city and county, industrial, investigation we are making here at the present time of the material resources of the county and surrounding counties, for the purpose of developing the country.

Mr. Thomas: Are you familiar with Green and Barren Rivers?

Mr. Crump: Well sir, to a certain extent; I have been connected with them. I was connected with the Geological Survey of the State, here, a number of years, and in that way it was necessary for
323 me to know a good deal about the mineral conditions of the various parts of the State, and I have done a good deal of work in the Western coal field.

Mr. Thomas: What is the distance from here to Evansville by river?

Mr. Crump: About two hundred miles.

Mr. Thomas: What is the distance from Nashville to Evansville by river?

Mr. Crump: I figure that at about 350; I have it down here about 350.

Mr. Thomas: About 340, I think.

Mr. Crump: Then, about 340. I didn't have those figures. I just figured that out by a map, just by measuring the river.

Mr. Goodwyn: Is that the distance from Evansville to Nashville, and Evansville to Bowling Green?

Mr. Crump: Yes sir.

Mr. Thomas: Two hundred miles from Evansville to Bowling Green, I know that is right.

Mr. Goodwyn: I was speaking of the other distance, from Evansville to Nashville.

Mr. Crump: Yes, I estimate that at 340.

Mr. Thomas: What is the distance from Clarksville?

Mr. Crump: From Clarksville to Evansville, I made that about 60 miles difference, the distance from Clarksville to Evansville is two hundred and fifty miles, that is just the approximate distance. I figured that out on the map. I didn't have the reports with me, because those matters are known perfectly well; it is exactly 193 miles from Nashville down to the mouth of the Ohio River.

Mr. Thomas: What is the distance from here, by rail, do you know?

Mr. Crump: It is about fifty miles to Guthrie, and—I should say about 150 miles (a hundred and fifty miles).

Mr. Goodwyn: A hundred and fifty-six.

Mr. Thomas: How much of our boat line travels on the Ohio to get to Evansville?

Mr. Crump: Ten miles.

Mr. Thomas: What is the population of the city of Bowling Green, according to the Government census?

Mr. Crump: Ninety-one hundred and seventy-three.

Mr. Thomas: Have you made any examination of the territory surrounding Bowling Green, or are you familiar with it agriculturally?

Mr. Crump: Yes, sir, I have been very much interested in the territory for 25 or 30 years, which is necessary on account of having much to do with the construction of roads and I know about the agricultural conditions pretty well.

Mr. Thomas: What is it as an agricultural country?

Mr. Crump: I don't think there is any better country in any latitude; produces all the products that grow in the temperate zone. We are on the 37 parallel; it is the equal of any country. We have a soil here the result of the decomposition of the limestone that is the equal of any soil anywhere in the production of agricul-
324 tural products.

Mr. Thomas: How does it compare with the territory around Nashville and Clarksville; as good as that?

Mr. Crump: The territory around each of them is different. Clarksville's is something like ours. It is not as good there below the silicious beds. St. Louis limestone, it does not make as good as at Nashville,—it is blue-grass country with a great deal of stone, surface rock, it is good territory in wet seasons, suffers in dry seasons very much. It does not equal the territory we have here for agricultural purposes.

Mr. Thomas: About the mineral wealth surrounding Bowling Green possible to develop, what can you state?

Mr. Crump: With the center here, we are on the eastern edge or rim of the Western Coal Fields, in the upper beds of the St. Louis limestone which carry about thirty feet of commercial building stone,—what is known as the Bowling Green white stone, or Oolite. That is a stone superior to Bedford and there is no competition between the stone on account of the fact that our stone carries comparatively no magnesia, magnesia being an element that causes the Bedford stone to become dark, whereas, the stone here gets whiter all the time and within the last year four hundred cars of this stone have gone out of Bowling Green or are going out; the largest part has gone and the largest parish church in America on 53rd Street and Fifth Avenue, New York is being built of it.

Mr. Thomas: That stone beginning to be developed now?

Mr. Crump: Yes sir, there are, on Barren River now, been developed and opened up in the last year six operating quarries, with a capacity of two cars a day, of 400 cubic feet each are being developed.

Mr. Thomas: In what distance of Bowling Green?

Mr. Crump: The farthest of those is about 10 miles by land and about 20 miles by water.

Mr. Thomas: Is that stone handled by bringing it here and putting it on the railroad?

Mr. Crump: Yes sir, that stone all comes to this point and is now being handled at this point.

Mr. Thomas: Is there any coal within reach of Bowling Green?

Mr. Crump: Yes sir.

Mr. Thomas: Of the river?

Mr. Crump: Yes sir, we strike the coal measures inside of Bowling Green now. We have three foot coal in ten miles of Bowling Green. The river, though, strikes the coal, the first workable coal about thirty one and a half miles below Bowling Green, and Green River runs through the coal measures up to the Mammoth Cave. We have about 60 miles, about 40 miles or probably 50 miles of river coal that is accessible to Bowling Green and it was at one time, I would say, very largely developed.

Mr. Thomas: Ever any carried to Bowling Green formerly by river by this Navigation Company?

Mr. Crump: In 1884 according to the report made to Captain Post, of the United States Engineers, a report was made by
325 the President of the Navigation Company that in that year 20,000 tons of coal came to Bowling Green and they stated that the development might be made to double that amount. Last year 4,000 tons of coal came to Bowling Green,—1910.

Mr. Thomas: By river?

Mr. Crump: Yes sir, by river. The rates in 1884 ran from 4 to 6 and 8 cents in the house.

Mr. Thomas: Delivered coal?

Mr. Crump: Delivered coal, yes, whereas the rates now are double those prices, and I have an idea comparatively little coal comes by way of the river.

Mr. Thomas: And the delivered coal is a great deal more than that?

Mr. Crump: Delivered coal is about double those prices at this time.

Mr. Thomas: You say 4, 6 and 8 cents per hundred?

Mr. Crump: 4, 6 and 8 cents per bushel; we sell coal here by the bushel.

Mr. Thomas: 80 Pounds?

Mr. Crump: Yes sir, and 25 bushels to the ton. So you can figure that out. That is a dollar a ton and over. 25 bushels is what they make a ton of coal here.

Mr. Thomas: Have you any record of the freight that was delivered here besides the coal?

Mr. Crump: In 1884, according to that same letter, the general freight outside of the coal, was about 50,000 tons.

Mr. Thomas: What was it last year?

Mr. Crump: The entire freight last year was 27,000 tons. That includes everything. With the coal, in 1884, the amount freight delivered by the river was 75,000 tons. Including the coal, the entire

freights, the tobacco, they reported 5,000 hogsheads of tobacco, were shipped from this point by boat.

Mr. Thomas: That was in 1884.

Mr. Crump: Yes sir, in 1884. In 1910 there was 27,188 tons, was the entire shipment of freight by river to Bowling Green; of that amount, 4464 tons of coal and 10,448 tons of bituminous sandstone or asphaltic sandstone was included in that 27,000 tons. The timber shipments were also quite large back in 1884. The shipments today are much less, due however, to the fact the timber is being largely reduced, the quantities of timber.

Mr. Thomas: Mr. Colston asks how was the Bowling Green traffic begun before the railroad.

Mr. Crump: Well, the first railroad in the country, one of the oldest railroads in the United States, was the road over here to the river. I suppose that was put here along about in the '30's. This point was the center of trade for all this territory, that Mr. Davidson wants to reach now.

Mr. Thomas: The same territory that he has occupied with his stores?

326 Mr. Crump: Yes, sir, he is trying to resuscitate the territory that came here once, about 10 counties around here that everything came here because this was the shipping point for New Orleans and in those days it was the only time that Bowling Green ever had millionaires, what would be called millionaires today,—they had men worth $110,000 to $200,000. No men ever been here since I have been that ever paid taxes on over $80,000.00.

Mr. Goodwyn: What he pays taxes on is not always a sign?

Mr. Crump: No sir, not always.

Mr. Thomas: There was a great deal of money made?

Mr. Crump: Yes, sir, but those people did as they have done in our day, they went to the large places, they went to Louisville and some to New York. Some of the largest buildings and best buildings in town today and most substantial were put up during that time; one connected with a part of this building here, the Rumsey-Skates Building and the Squigley Building.

Mr. Thomas: On the question of freight rates on the railroad,—the fact that we are treated as a local station and put upon local freight rates, has that retarded the development of this country?

Mr. Crump: Well, I can only state that in the last few years I have had occasion to look into the development of the stone here, and also this bituminous sandstone, to open up a stone quarry in a proper sort of way, cost from $80,000 to $100,000. Always the first question asked is, about the transportation rates,—How many railroads have you? I usually answer that question by saying we have one railroad, one of the best in the land and a splendid river and a river that operates practically every day in the year, all this winter, by reason of the fact that we do not have much freezing here; they cannot understand that at all. That has to be explained. I usually do that by saying that the headwaters of this river drain 6,000 square miles of cave territory, the only territory like it in the world of any size, and that the streams have a temperature of 54 degrees

the year round, that with the great depth of the river 150 miles up the stream, which runs from 20 to 30 feet deep, and 60 feet in some places, gives a large body of water that is very difficult to freeze, so much so that boats come from the South, a very unusual thing to be, at first sight,—to harbor into the mouth of the Green River. That is a well-known fact, that they come out of the Cumberland and Tennessee up here, and when the Cumberland and Tennessee are frozen, Green River is open. There is no other river like it that I know of on the globe.

Mr. Thomas: Is it not noted for its depth?

Mr. Crump: Yes, sir, one of the deepest, probably, known. I have heard that there is a short river in Canada that is deeper, averages greater depth than this. I only mention that question of depth because of the fact that it keeps the river open during the winter.

Mr. Thomas: You have continuous traffic, then, from here throughout the year?

Mr. Crump: Yes sir, we have practically continuous traffic; I don't think, since I have been living here there has been ever
327 a time, only a few occasions, once or twice probably, that the river has been frozen so you could skate on it.

Mr. Thomas: What part of the river is navigable?

Mr. Crump: It is about 45 miles up to Mammoth Cave. Mammoth Cave is the head of navigation on Green River.

Mr. Thomas: Has there any asphalt been brought up?

Mr. Crump: Yes sir, last year 10,448 tons of asphalt shipped.

Mr. Thomas: Any beds of it above Bowling Green?

Mr. Crump: Yes sir, the amount is enormous. The beds run from 25 to 30 feet thick and run from 20,000 to 40,000 tons to the acre and the tonnage is very very large and I will also state that it is the material that the Government has thoroughly tested; it makes a surface for a macadam road which the Government engineers state to be water-proof, dust-proof, noise-proof and automobile-proof and we have right here a promising demand for surfacing 200 miles of highway from Louisville to Nashville, what is now known as the Lincoln Way, and this material is being tested at the present time in the suburbs of Louisville, at St. Helens, a little place just outside of Louisville—I suppose you gentlemen all know it, it is down towards the old Realm. This material has a very promising field. Another beauty or advantage about that is, it is on the river, I suppose, probably, on neutral territory. I know we get a better rate from North of Brownsville on the Nolin River, a small stream that comes into Green River just above Brownsville,—we get a rate there that is approximately half of the rates that are given there by the L. & N. or the Illinois Central. I have had occasion to investigate those rates because we can reach Bowling Green.

Mr. Thomas: You mean the rail rate?

Mr. Crump: The rail rate, yes sir, we can reach Bowling Green at about 60 miles and Rockport in 90 miles. By reason of that fact, we get the effect of the—it becomes a competing point, not much of a competing point but that is the rate they get.

Mr. Thomas: What point is that?

Mr. Crump: The Green River points. I think you all have the Green River rate, I think I have a rate from you on lumber and things of that kind, which you have been here considering, about rates.

Mr. Thomas: Do you know the rates from here to Brownsville, and the general rate from Evansville to Brownsville?

Mr. Crump: No sir, I have had no occasion to inquire.

Mr. Thomas: Do you know Livermore and Rockport, the places mentioned by the gentleman examined this morning?

Mr. Crump: Yes sir, not competitive points with Bowling Green especially, but they have as good transportation water facilities as we have. I don't know that they will get any better rates. I know of one thing that has occurred here, a little over a year ago. A rate was made, at least a promise of a rate, on stone from here to New York, was made from down the river by way of Rockport to New York for the same Bowling Green rate. I think the rate from here to New York is 27¾ on stone. That same rate was considered by way of Rockport and the stone was to be billed from the
328 quarry. Here the stone has to be brought to the elevator and placed on car and billed out from Bowling Green. That was regarded as an advantage, but that matter never, no stone was shipped there; I think it was due, perhaps, as I heard, to the fact that the loading facilities at Rockport were not sufficient. They have got an incline there, they couldn't handle stone in large amounts there without the expenditure of probably some $15,000.00 or $20,000.00 for an elevator. But I expect Mr. Goodwyn could tell you more about that than I could tell you.

Mr. Thomas: Have you made any investigation of the Government reports to see how long the Cumberland River was open during the year?

Mr. Crump: I just looked over the recent reports there as we have all known that in a general way. The Cumberland River is open six or seven months in the year,—seven months would be the limit.

Mr. Thomas: And closed the rest of the time?

Mr. Crump: Yes, of course. There are times when boats could get through, but navigation on the river is about seven months in the year.

Mr. Thomas: How much money has been spent on the system of navigation on the Green and Barren Rivers, in construction work and yearly maintenance since the Government took charge of it?

Mr. Crump: Well, since the Government took charge of it, it has spent a million, or over three quarters of a million—seven hundred thousand and it costs about $80,000.00 a year at the present time, the maintenance, to maintain this river, and it does nothing like as much business as it did when it was owned by an individual company. At that time, I will state, too, that what is known as the Illinois Central was the C. O. & S. W.—Mr. Huntington's road. And they had excellent shipping facilities by way of that river. They had two lines here that they met and were competing lines. The railroads now are so neighborly and kindly disposed to each

other, have such friendly agreements in the territory, etc., that they treat each other in a very liberal sort of a way.

Mr. Thomas: Did you find out what the Government spent on the Cumberland River near Nashville?

Mr. Crump: They put in one lock, Lock A, they call it, I don't know what it cost.

Mr. Thomas: I will get you to file as part of your deposition Report on Improvements of Rivers and Harbors in the Louisville District, by Lytle Brown, 1910, and mark it Exhibit No. 1.

Mr. Crump: I so file it.

Mr. Thomas: And the Report upon the Improvement of Rivers and Harbors in the Nashville, Tennessee District, by William W. Harts, 1910, as Exhibit No. 2?

Mr. Crump: I so file it.

Mr. Thomas: How big are the locks through here?

Mr. Crump: They report the locks here 138 feet wide, the draft 5 feet.

Mr. Thomas: Which are those locks?

Mr. Crump: These are 35 feet wide, 138 feet long and 5 feet draft.

329 Mr. Thomas: Doesn't that report from the Nashville, Tennessee District show that even when the River is open, that the decrease in its depth stops the larger boats and boats of smaller draft only can go even before it is shut up?

Mr. Crump: Yes sir, that is a well know- fact, that they have to change the character of the boats there, and we run the same boats the year round here. That is a very important sort of thing.

Mr. Thomas: Would you say that on a river that was continuous and open, the traffic being handled throughout the year, that the boat that handled the traffic would handle it at a cheaper or less rate than it would on a river where the boats ran only a part of the year?

Mr. Crump: I am not a steamboat man, but I am thoroughly satisfied that this river of ours is a hundred per cent better than the Cumberland River for navigation purposes at the present time.

Mr. Thomas: Are you satisfied that the freight can be handled on it as cheaply?

Mr. Crump: I think so. I don't think there is any question about that in the world. Another statement that I might make here, that I got from Col. McKenzie's report about a year ago, was, that the faculty or rate of rapidity with which our transportation takes place, which was an astonishing thing to me, he stated that an average freight car in the United States made 23 miles in 24 hours, and the average boat in the United States made 125 miles in 24 hours. I am prepared to believe that, from a small shipment I had made in a point in Virginia, near Washington, recently, which was three weeks on the road. That freight car that came in could not have made more than 23 miles in 24 hours.

Mr. Thomas: Have you ever been to Nashville?

Mr. Crump: Yes sir.

Mr. Thomas: Do you know any reason why Nashville, or Clarks-

ville, Tennessee, should be charged a less freight rate on the same goods,—the same character of goods passing through Bowling Green from the East, and over the same line of railroad and charged for going in the same direction, for the longer haul, materially less than the charge for the shorter haul?

Mr. Crump: As to Nashville, I imagine it could, because she has got two railroads there, it is a competing point, competing lines of railroad.

Mr. Thomas: Do you know whether those railroads are competing or not?

Mr. Crump: I know they have been competing and they were competing long enough to fix a rate.

Mr. Thomas: Rates on what?

Mr. Crump: A basing rate on traffic. They competed for a while, I am sure. For Clarksville, I think we should have everything and that we should have a better rate, everything else being equal, I think we should have a better rate than Clarksville. I have never been able to find out how Clarksville got her good rate in the first place. I knew old Captain Gracey very well down there, but I never found that out exactly, how it first started.

330 Mr. Thomas: What railroads run into Nashville?

Mr. Crump: The Tennessee Central and the Southern operates over the Tennessee Central in one direction.

Mr. Thomas: Going out North of Nashville, that has been operated by two roads under lease, hasn't it, the Tennessee Central?

Mr. Crump: Yes sir.

Mr. Thomas: As a matter of fact, do you know whether or not there have been any freight rate changes in Clarksville since the Tennessee Central has been in operation?

Mr. Crump: No sir, I don't know.

Mr. Thomas: What other railroad runs through there but the L. & N.?

Mr. Crump: The Nashville & Chattanooga, which is a part of the L. & N.

Mr. Thomas: Don't it own 80% of the stock?

Mr. Crump: I know it controls the road, I know the President of the road, but I haven't the honor——

Mr. Thomas: So, as a matter of fact, in the railroad situation, there is nothing to entitle Nashville to a cheaper rate?

Mr. Crump: Nothing, as I stated, but those other lines being there.

Mr. Thomas: You don't know that it has affected it in any respect?

Mr. Crump: No sir, I don't know.

Mr. Thomas: Is it entitled to any great advantage on account of the river?

Mr. Crump: It is not. I don't think it equals our condition here, the river does not. I think our condition here for the river, as I said, is one hundred per cent better, that is my guess about that.

Mr. Thomas: Can Bowling Green, and this territory that you mention, being surrounded, develop as it should, or the merchants

and business men of Bowling Green, the jobbers and wholesalers, being treated justly and fairly, or are industries to be developed on the present local rate basis?

Mr. Crump: I don't think so, I don't think it is possible.

Mr. Thomas: How long have you been working at it, to get it down, I mean to develop the territory?

Mr. Crump: I commenced work twenty-one years ago, since I began to try to find out what the rates were and to improve the rates, and I will also state a little over twenty years ago I was in New York and saw the President of the L. & N. Railroad,—not the one now,—Mr. Norton, who was President and whom I know very well and spoke to him about the stone here, because, geologically, this stone has been known a long, long time. Schaler first spoke of it in 1873 and wrote it up as the finest stone in America, that there was nothing better than this in America, and I said to Mr. Norton, asked him why couldn't we develop this stone. And he said to me, Don't you know that that stone will be just as good one hundred years from now as it is today and that we are very very busy. They
331 were opening up Birmingham at that time and had a longer haul and several other reasons, that sounded from that standpoint admirable. But he said to me, when talking about building a railroad, Mr. Huntington was talking about coming here at the time, he said to me, show me what you all want over there and if you have anything you want especially, I will come over and get it for you. I said to him, Mr. Norton, you are the very man we don't want to get. If you get that way, we will never get anybody else to come in there. I know him quite well, was at his house when this occurred. So, I know how they felt a long time ago. How Mr. Smith feels I don't know, because he does not consult me about matters of this kind.

Mr. Thomas: The boat company operating at this time, the Evansville & Bowling Green Packet Company, who is President of it?

Mr. Crump: I have seen the name on the list. Mr. Howell, I know him very well.

Mr. Thomas: He is also freight agent of the Louisville & Nashville Railroad at Evansville?

Mr. Crump: Yes sir, accredited freight agent. No doubt about that at all, he is a good friend of the L. & N.

Mr. Thomas: What is the general opinion, the consensus of opinion or strong conviction as to the community of interest between the L. & N. Railroad and the steamboat line now operating?

Mr. Crump: I believe, and I think that the community generally believe, Mr. Wilkerson excepted probably,—that they are absolutely controlled one by the other. It may be that the L. & N. don't own a dollar of it, I don't speak as to that; but I think it assures Mr. Howell that he shan't lose any money in operating his boats.

Mr. Thomas: That he operates the boats?

Mr. Crump: That he would not lose anything, he will come to his assistance if necessary. They are certainly very friendly.

Examiner Boyle: Is that just an inference, or is there anything tangible that you base it on?

Mr. Crump: Well, I base it on this fact; that whenever there is another boat in the river,—or before Mr. Howell owned the boats, when they were operated by an independent company, at least when the river was owned by an independent company, that we had competition here between the boats in the river; in other words, the boats came up town and solicited freight and wanted the freight shipped to go from here by way of Evansville. Now I have never heard of soliciting freight agents being here. There may be some, but I never hear of it.

Mr. Thomas: Did you ever hear of any agent representing either one soliciting against the other?

Mr. Crump: I never heard of it, but I do know that the L. & N. sent their agents here to me for freight that originated up on Green River, freight that might have gone to Rockwood. I know they have been here on several occasions.

Mr. Thomas: But never soliciting freight on the other lines?

Mr. Crump: Never heard of it. I don't know of that at all.

332 Mr. Thomas: Well, when there was another boat in here——

Mr. Crump: Oh.

Mr. Thomas: You say that the rates on the Evansville & Bowling Green Packet Company were cut all to pieces?

Mr. Crump: Yes sir, they were. I had at one time, something to do with the interests in the river and knew something about it. At the time this particular line was first put *to* the river, at one time the street car line hauled freight, they had a freight car they brought over here and at that time I knew a good deal about it. There were two boats in the river, Capt. Bewley was running; I knew something about the freight rates. I knew the freight men to solicit for both of those boats, but I never heard of any competition between the present boat line and the L. & N.

Mr. Thomas: The boars run regularly, though?

Mr. Crump: And they are not dangerous competitors. Yes sir, they run constantly.

Mr. Thomas: That street car line that you were talking about being to the river, that is not the Portage Railroad?

Mr. Crump: No sir. I will also state another thing: That when the line first started to the river, the street car line ran down there, I was approached at that time by the Chief Attorney of the L. & N., who was James J. Mitchell, and he stated that, under the Portage Railway charter, that no road could strike the river within probably a mile, it might have been a half mile, on either side of the Elevator where they struck the river; that their charter gave them control for half a mile, to be perfectly safe, on either side of the Portage Railroad; but that was never contended, I never heard of it after he made that statement. The railroad rails were laid and there was no fight made over that at all.

Mr. Thomas: The Portage Railroad is that old railroad?

Mr. Crump: Yes sir, that was the old horsecar line that was

afterwards acquired by the L. & N., and is operated now as the River Branch of the L. & N.

Mr. Thomas: Who owns the old wharf?

Mr. Crump: The old wharf was originally owned by the Bowling Green Street Car line at one time; it was afterward acquired by the Street Car Company and is now owned by the Evansville & Bowling Green Packet Company; that was the original wharf. It was at the end of the street car line. Someone asked here about the charges, what effect the wharf had. No boat could land there unless it paid five dollars for landing, that was the charge and that charge could be increased to any extent and it has operated as a very serious inconvenience to the people, to the independent boats, we have had there, but at the present time that is obviated by this free wharf and I have stated in connection with the Stone Companies that are being developed here, that they would not have come,—I know of one, certainly, that would not have come here but for the fact that there was a free wharf, that they could land, and also because there was a possibility, if necessary, of their getting the stone out

333 to Evansville, if it had to be done,—there is a 21 cent combined rate on stone from Evansville to New York, and efforts have been made recently to get direct a 4 cent rate from here to Evansville by water; that would give you a 25 cent rate, then, to New York, against the 21 cents that exists from Bedford to New York; but I said, the stone here is of such a superior quality, the price it brings is of such a character, that we can still pay 27¾ cents and compete with Bedford in the city of New York.

Mr. Thomas: Now, briefly, if Bowling Green had a rate that she would be entitled to considering the river as a free river, maintained by the Government as a highway, untrammeled with any agreements or community of interests what are the possibilities of development of this territory?

Mr. Crump: I think in the next ten years we could have fifty quarries opened on this river. I think it will probably be done anyhow, I think Mr. Goodwyn will have that done as it is, I think we will have fifty quarries opened along the line of this river. All the quarries that are being opened now select the river for the reason that there is a possibility of water outlet and because the river operates every day in the year.

Cross-examination:

Mr. Colston: This is a matter that we could verify from any map, but for convenien-e I will ask you to state what is the distance from Nashville to the Ohio River,—to Paducah, say?

Mr. Crump: Well, I think that is, from Nashville to the Ohio; I have it here exactly, that is given in the report that is filed there.

Mr. Colston: Say, via the Cumberland River? What is the distance between Bowling Green and the River, to Evansville?

Mr. Crump: It is 193 miles.

Mr. Colston: Yes, you have stated the distance from Bowling Green to Evansville.

Mr. Crump: Yes sir.

Mr. Colston: You also stated the distance from Nashville to Evansville.

Mr. Crump: Yes sir.

Mr. Colston: Nashville, however, is on the Cumberland River which empties into the Ohio River at Smithland, a short distance above Paducah.

Mr. Crump: Yes sir.

Mr. Colston: Paducah being a large town on the Ohio river?

Mr. Crump: Yes sir.

Mr. Colston: Now, I would like you to state the distance between Nashville and Paducah?

Mr. Crump: It is about how far from Smithland to Paducah. It is not over 20 miles, is it?

Mr. Colston: Ten, I think.

Mr. Crump: Across the country it is a very short distance, ten or twelve miles. From Nashville to Smithland, it is about 193, that would be about 200 miles, then, you see.

334 Mr. Colston: How far from Clarksville to the Ohio River, to Smithland and Paducah?

Mr. Crump: It is about 60 miles less. About 130 miles I take it. It is not over 60 miles from Clarksville to Nashville; by water, 130 miles; about 140 miles to Paducah.

Mr. Colston: Then it is a fact, is it not, that the distance from Paducah to Clarksville by water is practically 90 miles less than the distance from Evansville to Bowling Green by water?

Mr. Crump: Not 70 miles? There is 200 miles, it is 200 miles from here to Evansville, you see, and Clarksville is 190—that would make it about 60 miles, or 50 or 60 miles, it is just a guess, I haven't worked it out.

Mr. Colston: Was this Portage Railway that you say was established about 1830 in operation when the Louisville & Nashville was first built into Bowling Green?

Mr. Crump: Yes sir.

Mr. Colston: Do you know whether the Louisville & Nashville at that time encountered any serious complications from the Portage Railway on the river?

Mr. Crump: The Louisville & Nashville was built by Warren County here very largely, paid $100,000 to get it here.

Mr. Colston: Do you know how the rates from Bowling Green to Louisville compared with the rates to Nashville from Louisville when the railroad was first put through?

Mr. Crump: No sir, you reached Nashville by water.

Mr. Thomas: I don't think the Colonel understood the question about the competition when the railroad first came.

Mr. Colston: You were giving some history of the territory and I wanted to find out if you knew the history of the rate adjustment between Louisville and Nashville on the one hand and Louisville and Bowling Green on the other.

Mr. Crump: No sir, I did not.

Mr. Colston: In as much as you have given some history and in as much as you were also stating that there were no reasons why

one should be greater than the other,—but I believe you did state Nashville had competition in the shape of two railroads.

Mr. Crump: No sir, I don't know about that.

Mr. Colston: You don't know anything about that history?

Mr. Crump: No sir, I don't.

Mr. Colston: You do know that the Nashville & Chattanooga Railroad was built from Nashville to Chattanooga before the Louisville & Nashville reached Nashville?

Mr. Crump: No my attention had not been called to that.

Mr. Colston: You don't know whether or not Nashville was a considerable distributing point for the Southeast for Western grain and Western products before the Louisville & Nashville Railroad ever reached Nashville?

Mr. Crump: I don't know it, but I should think it was.

Mr. Thomas: He asked you when the Louisville & Nashville came in here whether it met with any competition or not.

Mr. Crump: No sir, he wanted to know if there was any competition between it and the river.

335 Mr. Thomas: The river was hauling everything at that time, wasn't it?

Mr. Crump: Yes sir, they had a water rate from here to Louisville.

Mr. Thomas: Boats ran from here to Louisville at that time, made the complete trip?

Mr. Crump: Yes sir.

Mr. Colston: You do not know, however, what was the measure of competition between Bowling Green and Nashville at that time?

Mr. Crump: No sir.

Mr. Goodwyn: Did you mean that the boats hauled the business before the Louisville & Nashville was built, or afterwards?

Mr. Crump: The boats hauled it, that was the time they were hauling all the freight, before the railroad was built.

Mr. Colston: Do you know what the status was when the rail connection was made?

Mr. Crump: No sir, I do not.

Mr. Connell: What commodities in this complaint are you personally interested in?

Mr. Crump: None at all. I only buy things that I ship.

Mr. Connell: You wouldn't know whether the rates north of the Ohio River were complained of or not?

Mr. Crump: No sir.

R. W. Smith was called as a witness and having been duly sworn, testified as follows:

Mr. Thomas: What is your name?

Mr. Smith: R. W. Smith.

Mr. Thomas: Age?

Mr. Smith: Thirty-six.

Mr. Thomas: Residence?

Mr. Smith: Bowling Green.

Mr. Thomas: How long have you resided in Bowling Green, Kentucky?

Mr. Smith: All my life.

Mr. Thomas: In what business are you engaged?

Mr. Smith: Books and stationery.

Mr. Thomas: How long have you been in that business?

Mr. Smith: Fifteen years.

Mr. Thomas: Same business?

Mr. Smith: Yes sir.

Mr. Thomas: At the same place?

Mr. Smith: Yes sir.

Mr. Thomas: Were you in business when the steamer Sun was in business here?

Mr. Smith: I was.

Mr. Thomas: And also the old Evansville & Bowling Green packet line?

Mr. Smith: Yes sir, I was.

Mr. Thomas: What effect did the operation of the steamer Sun by the business men have on freight rates by rail and on the
336 river by the other packet lines?

Mr. Smith: There was a material reduction in the river rates, I know.

Mr. Thomas: By the other line?

Mr. Smith: Yes sir.

Mr. Thomas: Below the Sun's rates?

Mr. Smith: Below the Sun's rates, yes sir.

Mr. Thomas: Was there any difficulty in getting freight hauled from Evansville by the other line, other than the Sun?

Mr. Smith: Any difficulty? I don't understand.

Mr. Thomas: I mean, do you know of any proposition they made about bringing goods from Evansville?

Mr. Smith: Yes sir, I know the proposition the agent made me.

Mr. Thomas: What did he do?

Mr. Smith: During that time he agreed to bring three boxes of school books from Cincinnati free of charge if I would let them be shipped that way.

Mr. Thomas: That is, the agent——

Mr. Smith: Of the Bowling Green & Evansville Packet Co.

Mr. Thomas: A great many times when the freight was ordered to be shipped by the Sun it would be brought up by the other boat, grabbed up and brought deliberately on without any authority at all?

Mr. Smith: Yes sir.

Mr. Thomas: In other words, the freight rates were cut all to pieces?

Mr. Smith: Cut all to pieces.

Mr. Thomas: Was the traffic on this river continuous throughout the year?

Mr. Smith: Yes sir.

Mr. Thomas: You are not familiar with Clarksville and Nashville?

Mr. Smith: No sir.

Mr. Thomas: Has Bowling Green got satisfactory freight rates for its line of business?

Mr. Smith: I think not.

Mr. Connell: Where do you get your supplies, mostly?

Mr. Smith: Evansville, Chicago, New York and St. Louis.

Mr. Connell: Do you know what rate you pay on books?

Mr. Smith: I don't know, in car loads.

Mr. Connell: Do you know what rate you pay, less than car loads?

Mr. Smith: From where?

Mr. Connell: From Chicago.

Mr. Smith: I think it is 90 cents to 96, I am not positive.

Mr. Connell: You don't know how that rate is made up, do you?

Mr. Smith: No sir.

Mr. Connell: Do you know what first class is from Chicago to Bowling Green?

337 Mr. Smith: Either 90 or 96. I don't know the first class rate on stationery.

Mr. Connell: That is the rate you pay?

Mr. Smith: First class, yes sir.

Mr. Connell: Do you know what rate stationery takes on the Lehigh River?

Mr. Smith: No sir, I do not.

H. D. GRAHAM called as a witness, having been duly sworn, testified as follows:

Mr. Thomas: How long have you lived in Bowling Green?

Mr. Graham: Fifty years.

Mr. Thomas: That is, all your life?

Mr. Graham: That is all my life.

Mr. Thomas: What connection, if any, with the Bowling Green Business Men's Protective Association?

Mr. Graham: I am secretary of the Association.

Mr. Thomas: How long have you been secretary of the Association?

Mr. Graham: Ever since its organization. I think possibly for seven years.

Mr. Thomas: In what line of business are you engaged?

Mr. Graham: Merchandise broker.

Mr. Thomas: What do you mean by that?

Mr. Graham: Well, I represent packers, a great many accounts, selling goods direct to the wholesale grocery trade.

Mr. Thomas: How many banks in Bowling Green?

Mr. Graham: Three.

Mr. Thomas: How many acres of strawberries contiguous to Bowling Green, commercial strawberries?

Mr. Graham: We have this year 1,100 acres. I am also Manager of the Strawberry Association.

Mr. Thomas: Ship them out in carload lots?

Mr. Graham: Carload lots.

Mr. Thomas: Is our river open throughout the year?

Mr. Graham: Continuous, all the time.

Mr. Thomas: These go by rail, not by water, because they are perishable?

Mr. Graham: They go by rail, under refrigeration.

Mr. Thomas: In shipping out in carload lots, what about your rates south, to Nashville, when berries have given out at Nashville and Memphis?

Mr. Graham: We have no rates at the present time Southbound rates on strawberry shipments, possibly for the reason we have never asked for it. I have applied for it now, I hope we will get it.

Mr. Thomas: What have you been charged?

Mr. Graham: I never tried it but once. We had to pay, I think, three times double first class, about $1.25 a hundred from here to Nashville, only, on one car, about forty-five cents a crate; whereas we shipped to Cincinnati for 15 cents a crate. That is because there was no rates, I suppose, put into effect.

338 Mr. Thomas: What commodities do you handle in your line of business as a grocery broker?

Mr. Graham: Sugar, canned goods of all kinds, salmon and sardines.

Mr. Thomas: What is the point of your sugar?

Mr. Graham: New Orleans.

Mr. Thomas: Has that always been so?

Mr. Graham: Always been so. We have no rate, at least the Eastern rate is prohibitory, we would not be allowed to buy from there if we wanted to.

Mr. Thomas: Could not buy from the east?

Mr. Graham: No sir. About 46 from the East, 20 from New Orleans.

Mr. Thomas: What was the way this 20 cent rate was gotten; did you take the matter up a year ago or two.

Mr. Graham: After this organization of ours had the matter up with the railroad people, we had this conference, and this rate was finally given us, 20 cents from New Orleans.

Mr. Thomas: What was the rate previous to that?

Mr. Graham: Previous to that, when we began working on it, it was 37.

Mr. Thomas: You couldn't handle sugar at all?

Mr. Graham: No sir, couldn't handle it at all. I schemed every way I could to get a rate, finally I did ship a few cars over the Illinois Central to Evansville, and then used the boat from Evansville to Bowling Green. That was while Mr. Clark was local agent; he took the matter up, finally came to me and wanted to know if our thirty cent rate would satisfy me on sugar. I said we might possibly be able to use that, but that is not what we want, but put that in, we can use it for awhile, and he put that in, 30; the railroad company held one of our cars at Evansville, I believe it was Mr. Duncan's over there, we refused it unless they would make it at that rate; I made them haul ot back to Evansville and haul it back by river.

Mr. Thomas: That was on the first reduction?

Mr. Graham: Yes, that was when we secured the first reduction.

Mr. Thomas: Just after the reduction, wasn't sugar bought in the East shipped to Evansville and boated here, wasn't that one of the reasons?

Mr. Graham: I didn't know anything about their eastern rates.

Mr. Thomas: You did get sugar at Evansville, did you not?

Mr. Graham: No sir, we bought all our sugar direct.

Mr. Thomas: I mean just before this rate, there was something about the East having sugar to spare, and it being brought to Evansville, and you buying it and shipping it by boat?

Mr. Graham: No sir, I never bought any sugar except from the American Sugar Refinery at New Orleans. It didn't take more than a few cars to secure the 30 cent rate.

Mr. Thomas: Even with that, you couldn't compete, could you?

Mr. Graham: No sir; that, of course, was a great benefit;
339 but still it didn't allow us to get very far away from Bowling Green with our sugar.

Mr. Thomas: What other commodities do you ship to Evansville from the places you buy them and ship by boat to Bowling Green?

Mr. Graham: Well, I route most everything that I sell to my wholesale trade, it is sold in carloads, I route everything possible by way of Evansville.

Mr. Thomas: That is, when it originates in territory——

Mr. Graham: No matter where it originates, Evansville has better rates on most everything, even in Louisville, then with the 12½ cents store door delivery rate that I have from Evansville, I have to use that rate to get our goods in here at all, I cannot use the all rail rate at all.

Mr. Thomas: Suppose you buy it——

Mr. Graham: Take beans, for instance; Jackson, Michigan; I have a rate into Evansville of 18, and store door delivery rate, Evansville to Bowling Green, 12½, makes the beans cost us in that way, approximately 18 cents a bushel delivere- whereas, if they are shipped all rail, it makes them cost 24½ or 25, a saving of about 7 cents a bushel, which is sometimes the profit to the jobber, in the large lots that they ship.

Mr. Thomas: What is the rate in carload lots that you get by boat?

Mr. Graham: Twelve and a half (12½) store door delivery.

Mr. Thomas: What is the maximum rate?

Mr. Graham: Twenty (20) cents.

Mr. Thomas: Less than carload lots?

Mr. Graham: Well, most of the things, all of it is 12½. There are some few items shipped in less than cars, such as potatoes and cabbage, 17½ a hundred. We did enjoy a 15 rate on potatoes for a number of years, which made 9 cents a bushel, but that was removed some time back, I don't know why the rate was made 17½.

Mr. Thomas: By boat?

Mr. Graham: By boat.

Mr. Thomas: You take oysters from Charleston, S. C., have you ever routed them by Evansville?

Mr. Graham: Yes sir, I let them come by Evansville, have a few times.

Mr. Thomas: And got the advantage of the river rate on Evansville, though it is another territory?

Mr. Graham: Yes, gives us a lower rate.

Mr. Thomas: Can you get a through rate, though, by river?

Mr. Graham: No sir, everything is bought by way of Evansville, care of the L. & N. incline.

Mr. Thomas: Are there any transfer charges at Evansville?

Mr. Graham: No sir, none on less than a car; it would be absorbed in the rate. I suppose it is.

Mr. Thomas: That is absorbed in the rate?

Mr. Graham: I guess it is.

Mr. Thomas: When you buy salmon, canned salmon, how do you ship?

340 Mr. Graham: I always buy that and give positive instructions, that is, for the Bowling Green territory, I have that shipped as I do all my shipments, to Evansville, L. & N. Incline, care of Evansville & Bowling Green Packet Company.

Mr. Thomas: How many cars of salmon have you bought now?

Mr. Graham: I have four cars on the way here now, that is, all routed that way.

Mr. Thomas: Do you buy it in pretty large quantities?

Mr. Graham: Yes sir, we handle them here, from anywhere from this territory,—Bowling Green, Glasgow together, from 4 to 6 cars. First, the Glasgow cars are always routed by way of Louisville; the rate to Louisville is the same from the coast as it is to Evansville, it has been until now, 75 cents. I don't know what it is now, they raised the rate to about 85.

Mr. Thomas: Where?

Mr. Graham: To these Ohio River points, and I don't know. Mr. Goodwyn knows all about what was done. At any rate, there was a change made in the rate and the minimum of 40,000 pounds was raised to 60,000. And I heard, first, that they restored the old rate of 75 cents and I have heard it also stated by the Louisville brokers that it was 60 or 65. I don't know what it is until it gets here.

Mr. Thomas: The river, then, is an element in freight rates to Bowling Green when you route your material or goods to Evansville and deliver it here by boat?

Mr. Graham: If it wasn't for the river, yes sir, we would be up against it good and hard.

Mr. Thomas: You could not get those carloads then?

Mr. Graham: Couldn't get anything.

Mr. Thomas: So, you use the river?

Mr. Graham: I use the river for everything.

Mr. Thomas: So far as railroad rates are concerned, Bowling Green is simply a local station on the railroad, is she not?

Mr. Graham: It is, as far as I am concerned. I have to use the river in combination to get into Bowling Green at all, with anything like a decent rate.

Mr. Thomas: Taking a shipment, say, at Jackson, Michigan, or

Seattle, or New York, in point, can you get a through rate in here which is satisfactory?

Mr. Graham: Well, of course, the only way we could, we could get the same rate to Louisville as we do to Evansville, but the rail rate from Louisville to Bowling Green on a great many things is greater than it is by Evansville by river.

Mr. Thomas: You can not get it by to Bowling Green?

Mr. Graham: There is no through rate to Bowling Green, that I know of, except the sugar rate. That is the only one I use. We may have other through rates, but that is the only one I know of; from New Orleans to Bowling Green was published 20 cents.

Mr. Thomas: At the time you got this rate of 20 cents from New Orleans by the business men kicking about it, did you get a railroad through rate on any other commodity?

341 Mr. Graham: Yes sir.

Mr. Thomas: What was that?

Mr. Graham: Rice. I have never been able to use that. It would take me three or four years to make up a carload of rice.

Mr. Thomas: You would never get a carload rate?

Mr. Graham: Well, we had a carload rate, I don't remember whether there was any change made on less than carload until this year, there has been a price made delivered to Bowling Green, but heretofore it has been made on rice from New Orleans. Now they make an f. o. b. price New Orleans and they claim 46 cents I think as the rate from New Orleans.

Mr. Thomas: How long did you say you had been in that line of business?

Mr. Graham: Seven years.

Mr. Thomas: Ever been to Nashville?

Mr. Graham: Yes sir, numbers of times. I don't know much about it.

Mr. Thomas: Ever been to Clarksville?

Mr. Graham: Yes sir, been there a number of times.

Mr. Thomas: Taking our railroad transportation, comparing it with river transportation to Clarksville and Nashville as an element, is there any reason why the river in Clarksville and Nashville should be any greater factor than it is in Bowling Green?

Mr. Graham: No sir, everything ought to be in our favor. We have a better waterway, open all the year round; I think it is an established fact that the Clarksville river is only open seven months out of the twelve; there is no reason in the world why we should not have a better rate. I don't know anything about the making of rates, but I understand they are all based on river transportation. If so, we ought to have better, or equally as good rates, as any of them.

Mr. Thomas: Assuming that the Tennessee Central has made no change in the freight or the through freight rates of Nashville or Clarksville, and assuming that the N. C. & St. L. with 80% of its stock owned by the Louisville & Nashville Railroad Company, which controls the rates that it makes and that it is not a competitive railroad and that the Tennessee Central is not competitive, is there any

reason why Nashville or Clarksville should have any advantage in freight rates on freight traffic carried from the east by Bowling Green to these points over the same line of railroad, going in the same direction, and a less charge made for the greater haul, the shorter haul being included within the longer?

Mr. Graham: No sir there is not, that I can see, especially to Clarksville. I see no reason on earth why she should have had anything.

Mr. Thomas: Do you know why Nashville should?

Mr. Graham: By the volumes of business and population, I don't know whether that figures in making rates or not.

Mr. Thomas: What is the rate to Nashville on sugar, do you know, from New Orleans?

342 Mr. Graham: I think it is 17, I am not sure about that, is that correct?

Mr. Goodwyn: 16 to Nashville, 17 to Louisville.

Mr. Thomas: And they haul the sugar from New Orleans right by here over the same road to Louisville for 17 and 16 to Nashville, and charge us 20 for it?

Mr. Graham: Charge us 20.

Mr. Thomas: Do you think that is fair? Isn't that a discrimination against Bowling Green? Isn't that an undue advantage to the men outside of Bowling Green?

Mr. Graham: Yes, I can see no just reason for it.

Mr. Thomas: On these other rates that are given, without going into detail, for they are given in this complaint, is there any reason for that unreasonable and undue prejudice and disadvantage against Bowling Green in all those rates?

Mr. Graham: No sir, none, except that they just can charge them and they charge them. That is the only reason I can give.

Mr. Thomas: Can Bowling Green ever develop as a jobbing point for the wholesalers to sell out to the retailers and ship goods, or as a manufacturing place, or can its natural resources be developed as they should be so long as she is hemmed in by the freight rates?

Mr. Graham: No, sir, never on the earth.

Mr. Thomas: Hasn't it all the natural advantages of any good town?

Mr. Graham: Yes sir, the best in the world.

Mr. Thomas: Good water?

Mr. Graham: Yes sir, and good soil.

Mr. Connell: I wonder if the L. & N. owns the electric light plant.

Mr. Thomas: No sir, that is one burden I won't put on her.

Mr. Connell: How long have you been on this rate proposition?

Mr. Graham: About seven years, ever since I have been a merchandise broker.

Mr. Connell: Weren't you up before Mr. Goodwyn about it?

Mr. Graham: Yes sir.

Mr. Connell: And the State Commission met here?

Mr. Graham: Yes sir.

Mr. Connell: And Mr. Sumpter went to Franklin and that case was tried there?

Mr. Graham: Yes sir.

Mr. Connell: That general horizontal rate reduction case.

Mr. Graham: Yes sir, and then I was at Franklin with them, too.

Mr. Connell: But what Bowling Green needs is being made a competitive point?

Mr. Graham: Yes sir, that is what we need.

Mr. Connell: To be made a basing point, however that may be?

Mr. Graham: Yes sir, that is what we need, we want that relief.

Mr. Connell: So you can compete with other people who are entitled to no better advantage?

343 Mr. Graham: Yes sir, so that we can meet them on halfway ground.

Mr. Connell: I understood you to say that the canned goods that came by Evansville or goods of that kind, they were delivered here at 12½ cents store door delivery?

Mr. Graham: Yes sir, the rate is 10 cents, they pay 2½ cents for transfer delivery.

Mr. Colston: The burden of your complaint is that your rates are not as low as the rates to Clarksville, Nashville, Louisville and Evansville?

Mr. Graham: Yes sir.

Mr. Connell: You said something about the rate on sugar from New York; are you complaining of that rate?

Mr. Graham: No sir, we have no rate to New York; that is, it is so we cannot use it at all; sometimes we buy sugar in New York at ten cents less than in New Orleans.

Mr. Connell: You would not use the rate, would you?

Mr. Graham: Yes sir, we would if you would give us a rate from New York the same as we get from New Orleans, we will do lots of business.

Mr. Connell: Do you expect a 20 cent rate from New York?

Mr. Graham: If that means less than New Orleans.

Mr. Connell: If you had a reasonable rate from New York, you could use it?

Mr. Graham: I wouldn't use it unless we could buy as cheap in New York as we could in New Orleans; I wouldn't pay five cents a hundred more in New York than I could buy in New Orleans.

Mr. Connell: You said, I believe, that the rates to Evansville were satisfactory?—That is, the rates north of Evansville?

Mr. Graham: They were satisfactory as far as I know. I don't know anything about how those rates are made, but I use that rate because I get better rates by way of Evansville than I do any other way, on account of our boat rate in here.

Mr. Connell: But you see no reason now to complain of the rates north of Evansville into Evansville?

Mr. Graham: No sir, if we had as good rates as Evansville you would never hear from Bowling Green.

Mr. Connell: Well, we will take canned goods here, and beans from Jackson, Michigan. You get a good many beans from there, I suppose?

Mr. Graham: Yes sir, buy them all there now, and Detroit, they used to be in Jackson, but their headquarters are in Detroit. But they are shipped from Michigan points.

Mr. Connell: You know, do you not, that that portion of the rates applying north of the River is the same on traffic destined to Nashville and Clarksville, and also to Bowling Green?

Mr. Graham: Do I know which?

Mr. Connell: That that portion of the rate applying from Jackson or Detroit to the Ohio River is the same, whether the shipment is destined to Nashville?

Mr. Graham: No sir, it is not the same; it is 16 to Louisville and 18 to Evansville, and I would rather use the Louisville route
344 if we had as low a rate from Louisville as I had from Evansville to Bowling Green. All I do know is that the rate from Jackson or any of these Michigan points is 16 cents a hundred and the rate is 18 to Evansville.

Mr. Connell: But if the rates are the same North of the Ohio River on traffic destined to Clarksville and Nashville, that they are to Bowling Green, you would have no complaint on that?

Mr. Graham: No sir, I wouldn't have any complaint on that.

Mr. Connell: Then you have no complaint north of the Ohio River?

Mr. Graham: No sir.

Mr. Goodwyn: I want to ask Mr. Graham a question or two.

You have just said in reply to a question asked you that if the rate from Jackson, Michigan,—using that, I presume as an illustrative rate,—to Evansville and to Louisville on business going to Nashville and Clarksville was the same as on business going to Bowling Green, you would have no complaint against that?

Mr. Graham: Well, I said this: I had no complaint to make of those rates.

Mr. Goodwyn: Well, you don't make any complaint?

Mr. Graham: No sir, I have no complaint to make on those rates from Jackson.

Mr. Goodwyn: Well, your rate, I understand, on canned goods from Evansville to the store door in Bowling Green by boat is 12½?

Mr. Graham: Yes sir, a hundred.

Mr. Goodwyn: Have you any complaint to make, or do you complain of that?

Mr. Graham: No sir, I don't complain of that.

Mr. Goodwyn: But your total rate on canned goods from Jackson, Michigan, to Bowling Green is included in the complaint, whatever your complaint is, because the railroad don't meet the boat rate.

Mr. Graham: I don't get any canned goods there.

Mr. Goodwyn: Well, beans.

Mr. Graham: Yes, beans is all I ship from there.

Mr. Goodwyn: Then your complaint is that the railroad from Evansville don't make the same rates as the boat?

Mr. Graham: How?

Mr. Goodwyn: You don't complain of the rail rate?

Mr. Graham: Yes sir, I do.

Mr. Goodwyn: You don't complain of the rate from Jackson to Evansville and you don't complain of the boat rate from Evansville to Bowling Green, but you do complain of the all-rail rate from Jackson to Bowling Green?

Mr. Graham: Yes sir.

Mr. Goodwyn: So, your complaint is, that the railroad from Bowling Green to Evansville does not make the same rate as the boat?

Mr. Graham: No sir, that is not it at all.

Mr. Goodwyn: Is your complaint against the railroad?

345 Mr. Graham: Against the railroad. They charge, I think, 43 from Jackson to Bowling Green.

Mr. Goodwyn: You also said you did not complain of the railroad rate from Jackson to Evansville, and from Evansville to Bowling Green; then you do complain, you must complain that the railroad does not make the same rate as the boat—You said, I believe, that you did not know anything about making rates?

Mr. Graham: Not a thing.

Mr. Goodwyn: You said also that you shipped some goods, was it canned goods,—Oysters, you say?

Mr. Graham: From Charleston, S. C.

Mr. Goodwyn: To Evansville and by boat.

Mr. Graham: I route some that way.

Mr. Goodwyn: Are you routing them that way now?

Mr. Graham: No sir, by Nashville.

Mr. Goodwyn: Because you found the Nashville rate was better than the other?

Mr. Graham: Yes sir.

Mr. Connell: What you mean is that you complain of the rail rate from Evansville to Bowling Green, is that it?

Mr. Graham: I never use the railroad at all. In fact, the all-rail rates in here on most any of these commodities that I ship are excessive; I cannot do it.

Mr. Connell: Well, I will put it this way: Assuming that the rate from Jackson to Evansville is the same, whether the freight is brought from Evansville to Bowling Green by rail or by water, then do you complain of the rate north of the Ohio River?

Mr. Graham: No, I am not complaining of the rate into Evansville because it may be as low as it ought to be. I will let Evansville attend to that.

Examiner Boyle: I think we have enough testimony on that. The rest of it will be only argument.

Mr. Graham: I didn't know that I had complained on the rail rate there from Evansville to Bowling Green, but from Louisville to Bowling Green.

Mr. Connell: The answer to my question will clear that up; assuming that the rate from Jackson via Evansville was the same, whether shipped from Evansville by all rail or boat line?

Mr. Graham: No sir, there is no complaint of the rate to Evansville at all.

Mr. Thomas: He asked you about your complaint of the rate to

Evansville. What did you say the rate was to Evansville from Jackson, Michigan?

Mr. Graham: 18.

Mr. Thomas: Then 12½ to Bowling Green?

Mr. Graham: Yes sir, 30½.

Mr. Thomas: For those two?

Mr. Graham: Yes sir.

Mr. Thomas: But you cannot ship it by rail?

Mr. Graham: No sir. 43 I think is the rail rate.

346 Mr. Connell: Then you have the 18 cent rail rate for 300 miles?

Mr. Graham: 18 cents rate from Jackson to Evansville.

Mr. Connell: You don't consider that rate unreasonable?

Mr. Graham: No sir, I don't consider that unreasonable. As I stated, from Evansville has as good rates as almost any place in the country.

Examiner Boyle: What is the rate to Nashville and Clarksville?

Mr. Thomas: In carload lots?

Examiner Boyle: Yes sir.

Mr. Graham: In carload lots navy beans from Jackson, Michigan, to Clarksville and Nashville 34 cents all-rail. That is, store door delivery at Clarksville.

Examiner Boyle: Which amounts to how much?

Mr. Graham: 32, I think they allow 2 cents,—32 or 33.

Mr. Thomas: So, by shipping in carload lots and taking pains to have it billed to Evansville and transferred to the boat, you get a rate on beans which is about the same as Clarksville, about 34?

Examiner Boyle: He says he gets a store door delivery here.

Mr. Graham: I do by boat. I ship corn in here——

Examiner Boyle: When you ship down to Evansville and into Bowling Green by boat, how do you bill those shipments via Evansville to Bowling Green?

Mr. Graham: Route them to Evansville care of the L. & N. Incline, to the Bowling Green & Evansville Packet Company.

Examiner Boyle: No other billing?

Mr. Graham: No sir.

Examiner Boyle: Don't bill it to Bowling Green?

Mr. Graham: No sir.

Examiner Boyle: They turn it over in bulk then—that ends the original contract?

Mr. Graham: Yes sir. There is no through river and railroad rate made at all.

Examiner Boyle: You don't k-ow whether that 12½ cent rate by the boat line is published in the tariff filed with the Interstate Commerce Commission, do you?

Mr. Graham: Yes sir, it is, that is a published rate.

Mr. Connell: The same condition would apply on canned goods from Indianapolis as from Jackson?

Mr. Graham: I don't sell anything out of Indianapolis, I don't know anything about that. I sell my corn out of Hoopeston, Illinois. I have to route all that by Evansville.

277

Mr. Thomas: Mr. Goodwyn asked you about you not routing cove oysters out of Charleston now to Evansville, like you did, but that recently you routed by Nashville. Is that because you get a combination rate?

Mr. Graham: I get a combination rate by way of Nashville. Mr. Benzer gave it to me.

Mr. Thomas: What is it to Nashville?

Mr. Graham: 24 cents or 25, I think, to Nashville, plus the 15½, whatever it is, that is, 29½.

347 Mr. Thomas: How do you get that 15 from Nashville here? Do you know how that occurs?

Mr. Graham: No sir, I don't know anything about how that occurs. It was a rate that was given to me, a combination rate. I don't know whether Mr. Benzer made a mistake on it or not, but he gave me that.

Mr. Thomas: You were surprised when you found out you could get it?

Mr. Graham: Yes sir, I was going to let it come like I did the other, by Evansville. There is not a great deal of difference when you consider store door delivery, but everything being equal, we prefer rail shipment to river shipment.

Mr. Thomas: One is 30 and the other 29?

Mr. Graham: Yes sir, 29½. The other would be 42½, store door delivery. Take the 2½ off and you have virtually the same rate. This rail rate is not store door delivery.

Mr. Thomas: In other words, when Mr. Binzel gave you that new rate, you took it instead of shipping by Evansville, which you had been doing?

Mr. Graham: Yes sir, I had one rate made me from Charleston, S. C., on Bullhead oysters. I lost all my records in the fire over here. It seems, it was 30 cents from Charleston South Carolina to Evansville, Indiana, provided it was for Evansville, altogether, stopped at Evansville. If it was points beyond, it took a 7 or 8 cents rate more. This combination rate that I have to Nashville may be the same. The way this question came up: Nashville is recognized as one of the lowest markets on the Bullhead oysters in the United States and they always are putting us out of buisness here and everybody else. I took it up with Mr. Binzel to find out what rate Nashville had, both from Baltimore and Charleston. He told me. I got to figuring on what kind of a rate he could make me from Nashville to Bowling Green, and he did so. The figure was 29½.

Mr. Thomas: 15½ of it was Nashville?

Mr. Graham: Yes sir; at any rate, the figure is 29½.

Mr. Thomas: I want to know what the part was to Bowling Green?

Mr. Goodwyn: I can lend you the tariff that was established at the request of you gentlemen who came up to see us about it.

Mr. Graham: It was 24½ to Nashville, that is what it is. Charleston, South Carolina, to Nashville, 24½, and 15 Nashville to Bowling Green.

Mr. Thomas: What about shipping from Baltimore? How do you do that, canned goods?

Mr. Graham: I used to have those shipments to come the same way, I always gave instructions, via Cumberland Gap. There is not much difference between the all-rail and river-and-rail from Baltimore. I think they both are pretty much the same, 14 or 14½ cents from Baltimore to Evansville, is 28; Baltimore to Louisville is 28; 28 plus 12½ is 40½, and I believe 41½ on carload lots from Baltimore to Bowling Green, all-rail, via Cumberland Gap.

348 Mr. Goodwyn: That is not all-rail, it is by water down to Norfolk, and then all-rail from there.

Mr. Graham: I don't know how they ship it, but at any rate, it comes in about 41½ by rail and 40½ the other way.

Mr. Goodwyn: You could not use that?

Mr. Graham: I do use the other route because the store door delivery is worth something.

Mr. Goodwyn: Don't you know the same articles come into Nashville from Baltimore for 33?

Mr. Graham: I couldn't make a comparison, I don't know. I did have all that. I haven't got it now. It is much less than we get it at Bowling Green.

Mr. Thomas: In other words, they carry it right by Bowling Green to Nashville for much less than we get here?

Mr. Graham: Yes sir, they rob us both ways.

Mr. Colston: That Mr. Binzel you speak of is the agent of the Louisville & Nashville at Bowling Green?

Mr. Graham: Yes sir.

Mr. Colston: If the complainants have some witnesses who are not immediately available, I have no objection whatever to putting Mr. Goodwyn on and completing his testimony and putting his witnesses on afterwards.

Mr. Thomas: I would rather get through with mine.

Mr. Goodwyn: Mr. Examiner, I am extremely anxious to get away if I can tomorrow afternoon at three o'clock; I have important business to attend to and if there is any way by which Mr. Thomas could be kind enough to accommodate us, I know he will if he can.

Mr. Thomas: I will come back tonight, your Honor.

Examiner Boyle: Mr. Thomas prefers to finish their case first.

Mr. Goodwyn: I presume the witnesses that Mr. Thomas is going to put on are cumulative, evidence of the same character introduced already.

Mr. Thomas: Very different, in a different line of business.

Mr. Goodwyn: We are perfectly willing to admit that all your witnesses will testify that they ought to have Nashville and Clarksville rates. We will stipulate in the record that they are all going to testify to that.

Examiner Boyle: We will take a recess now until 8 o'clock P. M.

Whereupon, at 6:05 P. M., a recess was taken until 8 P. M.

After Recess.

(At 8 P. M.)

E. A. Greer was called as a witness, and having been duly sworn, testified as follows:

Mr. Thomas: What is your name, age, residence and occupation?

Mr. Greer: E. A. Greer; Furniture; I am forty-two years of age; Bowling Green.

Mr. Thomas: How long have you resided at Bowling Green, Kentucky?

349 Mr. Greer: Thirty-five years.

Mr. Thomas: What is the name of your furniture firm, your retail firm?

Mr. Greer: L. Greer & Son.

Mr. Thomas: How long has L. Greer been engaged in that business?

Mr. Greer: Mr. L. Greer has been in it thirty-five years here.

Mr. Thomas: How long have you been connected with the firm?

Mr. Greer: Thirty years. I went in when I was a kid. Handling furniture; I wasn't in the firm that long.

Mr. Thomas: But you are in the firm?

Mr. Greer: I have been in the firm 22 years.

Mr. Thomas: Have you been in any other line in the furniture business than the retail furniture trade, in Bowling Green?

Mr. Greer Yes sir, I am interested in the Bowling Green Furniture Manufacturing Company.

Mr. Thomas: Is that a corporation?

Mr. Greer: Yes sir.

Mr. Thomas: What has it been manufacturing?

Mr. Greer: Bed-room suits and chiffoniers; or beds, dressers, washstands and chiffoniers, would be the proper way to put it.

Mr. Thomas: Corporation?

Mr. Greer: Yes sir.

Mr. Thomas: Where is your factory?

Mr. Greer: That is on the corner of the Portage Road and Potter Street.

Mr. Thomas: It fronts on the Portage Road?

Mr. Greer: Yes, I guess you would call it the front.

Mr. Thomas: Who is the manager of the firm?

Mr. Greer: The General Manager is Mr. S. A. Hutton.

Mr. Thomas: How much money have you put behind that proposition here?

Mr. Greer: We have put about $25,000.00.

Mr. Thomas: Are you now manufacturing furniture?

Mr. Greer: We have been closed down since July.

Mr. Thomas: What are you doing with what you have on hand?

Mr. Greer: We are selling what we can of it.

Mr. Thomas: Is the corporation in process of liquidation?

Mr. Greer: Yes sir.

Mr. Thomas: What has been the difficulty in getting the furniture out of Bowling Green?

Mr. Greer: Well, our difficulty has been freight rates, about the only thing I know of.

Mr. Thomas: Have you been able to put that furniture in an any extensive territory?

Mr. Greer: That has been our trouble; we have been limited to very little territory surrounding the town of Bowling Green, yes sir, very small.

Mr. Thomas: What connection have you with this furniture company?

350 Mr. Greer: I am one of the directors, at present; I was president up to a year and a half ago.

Mr. Thomas: Do you believe, with your experience in the furniture business, in your experience with this furniture factory, that with an adjustment of freight rates taken considering water transportation that Bowling Green has, as an element, which she would be entitled to with a free river, that a furniture factory could be made to succeed in Bowling Green?

Mr. Greer: I do, yes sir.

Mr. Thomas: Have you ever been to Nashville, Tennessee?

Mr. Greer: Yes sir.

Mr. Thomas: Clarksville, Tennessee?

Mr. Greer: Yes sir.

Mr. Thomas: Do you know anything in the situation of those two communities, situations or surroundings of those two communities, which would entitle them to any preference over Bowling Green as to their inbound or outbound freight?

Mr. Greer: No sir, I do not.

Mr. Thomas: Our river transportation here is continuous throughout the year?

Mr. Greer: Yes sir.

Mr. Thomas: And Clarksville and Nashville, on the Cumberland, not exceeding seven months in the year?

Mr. Greer: I don't know about that, but that has been my understanding.

Mr. Thomas: Well, assuming that is so; assuming that it is not exceeding seven months in the year on the Cumberland from Clarksville and Nashville and at other times the boats which run during the period of navigation could not run and assuming that navigation is open continuous and uninterrupted throughout the year from Bowling Green to Evansville, Indiana, and all intermediate points, could not freight be handled as cheaply by the boats on the Green and Barren rivers as on the Cumberland river under those conditions?

Mr. Greer: I should think so.

Mr. Thomas: Were you ever interested in any way in the steamer Sun?

Mr. Greer: A little bit.

Mr. Thomas: Were you one of the backers of the Sun proposition?

Mr. Greer: Yes, the boat was put in my name.

Mr. Thomas: Put in your name?

Mr. Greer: Yes sir, as the owner.

Mr. Thomas: How long did the Sun operate?

Mr. Greer: Nine months.

Mr. Thomas: That was about the year 1901, wasn't it?

Mr. Green: Yes sir, it has been just about ten years ago.

Mr. Thomas: Where was the steamer Sun brought here from, if you remember?

Mr. Greer: Wheeling, West Virginia, I think it was.

Mr. Thomas: Who had charge of it as the master of the boat?

351 Mr. Greer: Mr. Bewley.

Mr. Thomas: The same Capt. Bewley who now runs the Speed from here to Morgantown, the mail boat?

Mr. Greer: Yes sir.

Mr. Thomas: He had been connected with a navigation company, hadn't he, for a number of years before that?

Mr. Greer: Yes sir, ever since I knew him.

Mr. Thomas: Spend his life time on the river? The steamer Sun was put in on the plan with an agreement signed up by the various merchants that they would pay so much towards it and get credit for freight paid, was it not?

Mr. Greer: The agreement was this: The boat cost $9,000.00, and there was possibly $7,500.00 raised among the merchants, they gave a contract,—contract note you would call it, I presume.

Mr. Thomas: I drew it.

Mr. Greer: Yes, I believe you did, and as these freight bills accumulated, they were to be paid on this note as a credit.

Mr. Thomas: That was in addition to what they raised?

Mr. Greer: No, this money, these freight bills, instead of paying the freight they were supposed to pa*id* on those notes, but that was cut down. The boat needed the money to operate on and the merchants didn't pay much attention to it and just let it drift along and paid and if there was ever a credit on these contract notes I never did know anything about it.

Mr. Thomas: After the Sun was put in with a scale of rates, what effect did that have on the rates on the Evansville & Bowling Green Packet Company, which was already in before.

Mr. Greer: They didn't have any rates after that. All the freight went for what they could get for it,—5 cents a hundred, and some for nothing.

Mr. Thomas: Were not the rail rates also cut materially?

Mr. Greer: Yes sir.

Mr. Thomas: Have you any instance of a shipment from Nashville, Tennessee, of beds or anything of that kind, that you can refer to?

Mr. Greer: Yes sir. I have got one shipment of 10 bed-room suits from Nashville, Tennessee, for $1.50.

Mr. Thomas: For all of that?

Mr. Greer: For the whole lot.

Mr. Thomas: By the rates that had been prevailing prior to the Sun, what would that have amounted to?

Mr. Greer: The rate before that, I think, was 32 cents, and it is about the same now, per hundred.

Mr. Thomas: What would that have amounted to, the bed room suits?

Mr. Greer: They would have averaged about 300 pounds a suit, about 3,000 pounds.

Mr. Thomas: About $10.00?

Mr. Greer: Yes sir, about $10.00.

Mr. Thomas: And you got those bed room suits brought from Nashville, while the Sun was in operation, for $1.50.

352 Mr. Greer: $1.50 is my recollection. That was the least I ever experienced in a rail rate.

Mr. Thomas: The Sun got behind, didn't it?

Mr. Greer: Yes sir.

Mr. Thomas: Didn't keep up?

Mr. Greer: A little late.

Mr. Thomas: And she was tied to the bank?

Mr. Greer: Yes sir.

Mr. Thomas: Now, when the Sun was setting, I believe you were on a committee with Mr. A. S. Hindes, Mr. J. E. Potter, at that time R. J. Potter & Sons, and had a conference with Capt. Howell about it?

Mr. Greer: Yes sir, in the Coin Building.

Mr. Thomas: Where this building burned?

Mr. Greer: Yes sir.

Mr. Thomas: Did he present to you a scale of rates?

Mr. Greer: Yes sir, I think they did.

Mr. Thomas: Some the Sun rates and some possibly higher?

Mr. Greer: Yes sir, that is my recollection. Practically the same rates that the Sun had.

Mr. Thomas: How long did he say he would maintain them?

Mr. Greer: Five years.

Mr. Thomas: You were all practically out of business at that time?

Mr. Greer: Altogether, practically down.

Mr. Thomas: You thought that you would just take those rates?

Mr. Greer: Yes sir, that was the best we could do, when we quit. We didn't know whether they would raise the rates or not, but we thought we would take all we could get.

Mr. Thomas: Even after the Sun was out of business, and when the bank was being wound up, it was necessary to adjust some of the debts of the Sun, wasn't it?

Mr. Greer: Yes sir.

Mr. Thomas: They are still pending against it?

Mr. Greer: Yes sir.

Mr. Thomas: Have you ever jobbed any, also, in your line of business, to any extent?

Mr. Greer: Yes sir. We jobbed for ten years, in a small way—didn't go any further north than Munfordville, or south than Franklin, or Gallatin, on the main line, and Guthrie on the branch.

Mr. Thomas: That was house furniture business?

Mr. Greer: Yes sir, that was with our retail, before we went into the factory.

Mr. Thomas: Do you believe, in your experience of thirty years, as a business man in Bowling Green, that it is possible for the jobbing business ever to be developed so as to meet competition in the territory that would naturally belong to Bowling Green as competitive territory, or for manufacturing establishments that ought to be established here, like manufacturing furniture, that would have been able to buy their wood here, and things of that sort, and to succeed, unless there can be an adjustment of freight rates
353 so that Bowling Green may not be discriminated against and have undue preference against her, as exists in favor of Nashville, Clarksville, Louisville and Evansville?

Mr. Greer: No sir.

Mr. Thomas: Louisville is North of Bowling Green?

Mr. Greer: Yes sir.

Mr. Thomas: Nashville and Clarksville south of Bowling Green?

Mr. Greer: Yes sir.

Mr. Thomas: And Evansville northwest of Bowling Green?

Mr. Greer: Yes sir.

Mr. Thomas: So with these rates on each side of her and around her, at these various places, she is hemmed in and circumscribed in her territory for operations?

Mr. Greer: Yes sir, that is my experience.

Mr. Thomas: Has there been also another furniture factory here in Bowling Green?

Mr. Greer: The Herman Sliding Blind Company was operated in the city, a furniture firm.

Mr. Thomas: Called the Keester Furniture Factory?

Mr. Greer: Yes sir.

Mr. Thomas: That has been operated here during this same period?

Mr. Greer: Yes sir.

Cross-examination:

Mr. Colston: Mr. Greer, when was your furniture manufacturing company incorporated?

Mr. Greer: I think it was five years in March or February that is coming: I don't remember the date exactly.

Mr. Colston: About 1907?

Mr. Greer: Yes sir, it would be, about.

Mr. Colston: Were the rates on your product in effect at that time any lower than they are now?

Mr. Greer: No sir, not that I know of.

Mr. Colston: Did you consider the effect of the freight rates on your business at that time?

Mr. Greer: No sir, we didn't take that into consideration. We presumed that we had a rate that we could get out with.

Mr. Colston: You thought you could succeed with the rates as they then existed?

Mr. Greer: Yes sir, we thought that; we didn't investigate that as we should have done.

Mr. Colston: Was the capitalization of $25,000.00 paid in entirely in cash?

Mr. Greer: The company was not capitalized at $25,000.00, it was capitalized at $15,000.00 at the time.

Mr. Colston: Was any part of the amount of $25,000.00 which you said represented your investment, any of it in cash?

Mr. Greer: No sir, it was all cash; well the $25,000.00 represented borrowed money and capital stock—$15,000.00 capital stock,
354 and then that was increased to $20,000.00, and $17,000.00 of the $20,000.00 was paid in, then we borrowed $7,500.00.

Mr. Colston: That was your working fund, $7,500.00?

Mr. Greer: Yes sir.

Mr. Colston: What kind of furniture do you manufacture?

Mr. Greer: We made a medium low-grade oak furniture.

Mr. Colston: Oak?

Mr. Greer: Yes sir.

Mr. Colston: Where did you obtain your oak?

Mr. Greer: We bought it here; we had some little shipped in from down below Franklin, down in that part of the country, some out on Barren, but the majority of it we bought right here from these mills out in the country.

Mr. Colston: How did you sell—did you sell in car-load or less than car-load lots?

Mr. Greer: We sold a few cars. The majority of our business was local, less than car—small shipments.

Mr. Colston: When you say less than carloads, at what point, when you say local, what kind of business do you refer to?

Mr. Greer: That is less than carload lots, is what I had reference to.

Mr. Colston: At what points, or in what territory did you sell your product?

Mr. Greer: Well, to give you a good illustration of it, the first business we did was sold through Mr. Jim Bennett, of Louisville. He made his first trip through central Kentucky, and he had a phenomenal trade. He sold about $5,000.00 worth of goods his first trip, and those orders would not run over $150.00 or $200.00 an order. His next trip around he expected to do quite a little business, but everybody hollered about the freight—"can't do anything for you." That was his next trip around, he would pick up an order just here and there.

Mr. Colston: Please define the territory that you describe as central Kentucky, a little more definitely, by stating the boundaries, or by giving the names of the towns situated in that locality?

Mr. Greer: I can give you a few of the towns; quite a number of towns around Lexington there that we worked pretty hard, I don't remember all of them—Paris, I think, and Winchester, and Mt. Sterling, and quite a bunch of those towns, I don't remember them all; we got orders out of all towns in there—possibly ten or fifteen of them.

Mr. Colston: You say he sold $5,000.00 worth on that first trip?
Mr. Greer: The first trip, yes sir.
Mr. Colston: What was the price at which you sold a bed?
Mr. Greer: Well, our goods were priced in suites, the lowest bed, if I remember correctly, was $5.50.
Mr. Colston: The suites will do then?
Mr. Greer: The suites ranges from $14.00 to $30.00.
Mr. Colston: Was that delivered price or Bowling Green price?
Mr. Greer: That was f. o. b. Bowling Green.
355 Mr. Colston: What was your manufacturing cost for a suite costing $14.50?
Mr. Greer: Well, that has never been determined yet; there is so many details that I am not familiar with, that I could not give you the cost on them.
Mr. Colston: What was your manufacture cost for a suite selling for $30.00?
Mr. Greer: We figured that they should cost right around $25.00.
Mr. Colston: But you don't know what it actually did cost?
Mr. Greer: No sir, don't know.
Mr. Colston: You didn't keep any cost account in your factory?
Mr. Greer: No sir, couldn't keep it as I wanted it kept, or at all, for the reason that we couldn't run steady enough to get a regular line on it.
Mr. Colston: How much does a suite of furniture weigh that would sell for $30.00?
Mr. Greer: It would weigh about 400 to 450.
Mr. Colston: What was your rate to these central Kentucky points?
Mr. Greer: Really, I couldn't say positively.
Mr. Colston: Well, state approximately.
Mr. Greer: Well, that would be right hard to say, it was hard around in 60 to 75 cents per hundred, is my best recollection on the subject.
Mr. Colston: It is a fact, is it not, that when you testified to your trouble consisting in the freight rate, that you were testifying to merely what some salesman told you one of his customers told him was the reason they did not buy from you?
Mr. Greer: Certainly.
Mr. Colston: What were the points with which you competed for that traffic?
Mr. Greer: Well, we had salesmen, commission men who made all of Kentucky and Tennessee; that is about the business.
Mr. Colston: With what manufacturing plants did you compete?
Mr. Greer: Well, we were in competition with Nashville, Evansville, and Louisville, New Albany—I think that is about the extent of them.
Mr. Colston: Do you know that any particular one of those points got the business that you think you otherwise would have gotten?
Mr. Greer: Well, Nashville seemed to have the lead in this end, and New Albany up above—the northern end of it.

Mr. Goodwyn: Was Nashville a competitor in the central Kentucky territory?

Mr. Greer: No sir, not in central Kentucky.

Mr. Colston: I am taking up now the territories in which you met competition. Now we will confine your reply to this question, please—to the competition which you met in the central Kentucky district; from what points did you meet competition in that district?

Mr. Greer: That was from New Albany.

Mr. Colston: Do you know how your freight rates compared with New Albany?

356 Mr. Greer: I think, my recollection is they were about a third higher per hundred.

Mr. Colston: About how many cent. per hundred pounds were they higher?

Mr. Greer: I think it was about 25 or 30.

Mr. Colston: Your disadvantage was about 400 to 450 pounds per suite, or about a dollar per suite?

Mr. Greer: It would run right around about a dollar, that was on the highest priced suit.

Mr. Colston: Now take your $14.00 suite? Your disadvantage on the $14.00 suite was no greater, was it?

Mr. Greer: No, it would be about the same, but the profits were not as much.

Mr. Colston: Did your $14.00 suite weigh as much as your higher priced suite?

Mr. Greer: No sir, it would weigh only about 350.

Mr. Colston: Your disadvantage, then, would be about 70 cents?

Mr. Greer: Seventy or seventy-five.

Mr. Colston: What was your profit on the $14.50 suite?

Mr. Greer: It was based on ten per cent., on the cheapest one would be about $1.40.

Mr. Colston: In what other territory than Central Kentucky did you attempt to sell your product, and met that competition then which drove you out of business?

Mr. Greer: Well, we got down to Hopkinsville; that would be about as far as we could sell and go, beyond that, of course Evansville and Nashville got in there, we couldn't meet them.

Mr. Colston: Did you go down the main line?

Mr. Greer: Well, we went the main line to Hopkinsville, yes sir.

Mr. Colston: Hopkinsville is on the Evansville division, isn't it?

Mr. Greer: Yes sir, I believe it is; well, our salesmen went clear through to Memphis, on the branch, and I think they went to Gallatin on the main line; I don't think they ever went into Nashville more than once or twice; they found they could not do any business there, and they cut that out.

Mr. Colston: In Hopkinsville you came in competition with what point?

Mr. Greer: Nashville and Evansville.

Mr. Colston: That was the first point in which you came in competition with those other points that you could not meet?

Mr. Greer: That was the first that I remember.

Mr. Colston: That contract that you spoke of having been made with the owners of the Sun by the Evansville & Bowling Green Packing Company, expired by limitation some time ago, did it not?

Mr. Greer: Oh, yes, that has been out for several years.

Mr. Colston: The rates were never raised were they, after the expiration of the contract?

Mr. Greer: They were not in furniture; I don't know how they were in other commodities.

357 Mr. Colston: Were those the only territories in which you sought to sell and met competition, that is, central Kentucky and down the main line and over towards Hopkinsville?

Mr. Greer: Yes, sir, well we did go across over towards Evansville, up on the other side of the river; we found that we could not do any business over there; we didn't expect to do very much there, because Evansville is right in the heart of that territory.

Mr. Colston: Did you meet any competition from Troy, Tell City, Cannelton, or from Grand Rapids furniture?

Mr. Greer: No sir, we didn't work that territory.

Mr. Colston: You didn't meet any competition from them in the territory in which you did work?

Mr. Greer: No sir.

Mr. Colston: Do you know, as a furniture man, what the nature is of the competition which other manufacturers in furniture have to meet, and on the part of the manufacturer at Troy, Tell City and Cannelton?

Mr. Greer: No sir, I do not.

Mr. Colston: Do you know to what extent Grand Rapids ships furniture, throughout this section of the country?

Mr. Greer: Well, they don't make any freight allowance with us through here, it is an open rate from Grand Rapids, it runs not over a dollar a hundred here from Grand Rapids. We buy very little goods from Grand Rapids, on account of the freight, that we can buy closer home.

Mr. Colston: But you do not feel the competition from Grand Rapids?

Mr. Greer: No, that was out of our class.

Mr. Thomas: You made second class furniture?

Mr. Greer: Yes sir, they make a different class of furniture from what we did; the Grand Rapids manufacturers make a higher grade of goods than we were making.

Mr. Colston: Did you come in competition with the furniture manufactured at Asheville and High Point?

Mr. Greer: No sir.

Mr. Thomas: Asheville and High Point, North Carolina?

Mr. Colston: Yes sir, North Carolina. Did those manufacturers make the same class of goods that you made?

Mr. Greer: Yes sir.

Mr. Colston: And you didn't feel the force of their competition?

A. No sir.

Mr. Connell: Mr. Greer, what points north of the Ohio River do you buy furniture at the present time?

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A. Well, we buy quite a little stuff at Shelbyville, Indiana.
Mr. Connell: Do you know what rates you pay from Shelbyville?
Mr. Greer: No sir, I don't know the exact figures.
Mr. Connell: Do you buy any at Crawfordsville?
Mr. Greer: No sir, we have not bought any there in a long time. We buy stuff at Kokomo, and a good deal of stuff out of Indianapolis.
358 Mr. Connell: What do you buy out of Indianapolis—furniture?
Mr. Greer: Chairs, and some furniture.
Mr. Connell: What sort of goods do you handle?
Mr. Greer: All kinds, we handle a general line of furniture.
Mr. Connell: Including stoves?
Mr. Greer: Yes sir.
Mr. Connell: Do you have any complaints to make against that part of the rate applying north of the Ohio river on any of your commodities?
Mr. Greer: Well, the rate from Chicago, we get a good deal of stuff out of Chicago, the rate is pretty stiff from there. We are compelled to go to Evansville for metal beds, when we would like to buy them in Chicago.
Mr. Connell: Do you know what class they take in Chicago?
Mr. Greer: No sir, I do not.
Mr. Connell: Do you know what rate you pay from Chicago?
Mr. Greer: The first class rate, I think, is 98, I don't think, though, the iron bed takes that, quite so high.
Mr. Connell: Do you know what rate it does take?
Mr. Greer: No sir, I don't know exactly; about 75 cents, I think.
Mr. Colston: How much weight of lumber is lost in the process of manufacturing that furniture?
Mr. Greer: I think it figured 20 per cent.
Mr. Colston: The furniture weighs then 80 per cent. of the rough lumber that goes into it?
Mr. Greer: Yes sir, that is my best recollection, I have been told that there is a loss of twenty per cent, in cutting the lumber, or one-fifth, of course they lose a little more weight than that; it is not figured.
Mr. Colston: About how much would you estimate the loss in the complete process?
Mr. Greer: Oh I expect it would run 25 per cent.
Mr. Thomas: You say you sent men so far as Memphis?
Mr. Greer: Yes sir.
Mr. Thomas: Any other points in Tennessee?
Mr. Greer: Well, we make the entire state.
Mr. Thomas: The entire State of Tennessee?
Mr. Greer: Yes sir, that is, with the exception of East Tennessee.
Mr. Thomas: You don't go into East Tennessee?
Mr. Greer: No sir.
Mr. Thomas: Where you would naturally meet Asheville, and those other places in North Carolina?
Mr. Greer: Yes sir.

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Mr. Thomas: But you say you couldn't do any business—you didn't get any business beyond Nashville?

Mr. Greer: No sir, we got some business between here and Memphis—Brownsville, and Humboldt, and those points down in there—Dresden.

Mr. Thomas: For a while?

359 Mr. Greer: For a while, yes sir.

Mr. Thomas: Do you buy furniture in Evansville?

Mr. Greer: Yes sir.

Mr. Thomas: You deal in furniture there, don't you?

Mr. Greer: Yes sir.

Mr. Thomas: How do you get it here?

Mr. Greer: By boat.

Mr. Thomas: All the furniture you buy in Evansville you bring by boat?

Mr. Greer: Yes sir.

Mr. Thomas: You have no difficulty in getting it, because two boats make two trips each?

Mr. Greer: Four boats a week.

Mr. Thomas: Two boats, two trips each?

Mr. Greer: Yes sir.

Mr. Connell: Do you think the rate on furniture from Chicago is too high in itself, or do you claim that you are discriminated against there in favor of some other point?

Mr. Greer: Well, there was a time when we took the matter up and investigated it thoroughly, and found that Nashville and Clarksville were getting rates of about 60 cents from Chicago, and we were paying about 98.

Mr. Connell: Then that is the reason you complain, because Clarksville and Nashville had lower rates?

Mr. Greer: Yes sir, one of the reasons.

Mr. Thomas: That is one of the legal complaints that is down in the bond.

Mr. Connell: As a matter of fact, that is the only reason, isn't it?

Mr. Greer: Well, that is one of the big ones.

Mr. Connell: What are the others?

Mr. Greer: Of course our other complaint is that we cannot get away from here with stuff and compete with other people who are in the same line of business.

Mr. Connell: Do you think the rate in itself from Chicago is too high?

Mr. Greer: I couldn't say that, because that is a matter for the railroads to determine, if it cost them that much money to haul it, but it looks like if they could haul it to Nashville for 60 to 65 they could stop it off here for twenty-five.

Mr. Connell: Then you are getting back to the other reason, Nashville has a lower rate?

Mr. Greer: Yes sir.

Mr. Connell: As a matter of fact, that is the only reason?

Mr. Thomas: He says not; I object to your repeating the question three times.

Mr. Connell: Well, if he has any other reasons, I think we ought to have them, if he is interested in these complaints he is probably entitled to a reason.

Mr. Thomas: If you want to raise an argument, we will put the witness aside, and we will take up the argument.

360 Mr. Connell: Well, we want the witness' reasons why. What are the reasons besides discrimination that you claim in favor of Nashville and Clarksville, have you, for making your statement that the rates were too high?

Mr. Greer: Well, I have no other reason that I can call to mind right now. Of course, it handicaps us in selling goods against Nashville or Clarksville in a retail way.

Mr. Connell: Well, that brings you back to the complaint that Nashville had a lower rate, as you said before.

Mr. Greer: Yes sir.

Mr. Connell: Is there any other reason?

Mr. Greer: No, sir.

Mr. Connell: None at all?

Mr. Greer: That is all.

Examiner Boyle: Clarksville & Nashville do not manufacture any furniture, do they?

Mr. Greer: No, Clarksville did have a factory, but they are sort of in the shape we are; they quit.

Mr. Examiner Boyle: Does Louisville manufacture any?

Mr. Greer. Yes sir.

Examiner Boyle: Of the grade that you were making?

Mr. Greer. No, I don't think they do now; they use to. New Albany is the closest I think we have.

Examiner Boyle: That point is not directly involved in this complaint; that is the reason I was asking, to see whether the outbound rates on manufactured furniture were properly to be considered now. That is for any other than general reasons.

Mr. Greer: No, sir, I don't know of any other goods that are made in Louisville.

Examiner Boyle: What does this furniture that you sold f. o. b. Bowling Green for $14.00, and that you sold f. o. b. Bowling Green for $30.00, retail for?

Mr. Greer: Well, that is supposed to be sold for about forty per cent profit, less the freight.

Mr. Connell: Did you make any attempt to ship any of this manufactured furniture to points north of the Ohio River?

Mr. Greer: No, sir, I don't think we did; possibly we did ship some goods to Madison, once or twice.

Mr. Connell: Wisconsin?

Mr. Greer: No, sir, Madison, Indiana, on the river; I think there was several shipments in there.

Mr. Connell: You don't buy any furniture now from any points in the East, do you?

Mr. Greer: No, sir.

Mr. Thomas: In speaking of your rate on furniture, which you

were going to resell, you were not speaking with reference to your manufactured furniture?

Mr. Greer: No, sir.

Mr. Thomas: Your Chicago rate, of which you complain?

Mr. Greer: No, sir.

361 Mr. Thomas: That was furniture you bought which you handled through your store?

Mr. Greer: Yes, sir.

Mr. Thomas: You have endeavored to handle them up and down the railroad?

Mr. Greer: Yes, sir.

Mr. Thomas: Some of the large furniture stores?

Mr. Greer: Yes, sir.

Mr. Thomas: That will keep you from selling up and down the railroad to customers?

Mr. Greer: Yes, sir.

Mr. Connell: How much of that stock do you carry at the present time?

Mr. Greer: Fifteen thousand dollars.

Mr. Thomas: That is your furniture store?

Mr. Greer: Yes, sir.

Examiner Boyle: I understand, Mr. Thomas, you have another witness who is now or has been engaged in the manufacture of furniture, and that it has been agreed by yourself and counsel for the defendants that you will stipulate as to what that witness would testify if he were here. That he could be produced if we wanted to wait until tomorrow, but for the sake of expedition, we will get this stipulation into the record and let it be considered.

Mr. Thomas: Yes, sir, Mr. F. L. Kister, Jr., if present, would state that he has lived practically all his life in the City of Bowling Green; is about forty-eight years of age; and that he has been for a number of years operating a planing mill and a dealer in lumber and a general contractor; that for a number of years he has been operating a furniture plant making a cheap grade of furniture, that formerly known as the sliding blind factory, but was converted into a furniture factory known as the Kister Furniture Company, owned by a corporation, and finally, he became the owner of the entire plant and business, and that as to the manufacture of furniture in Bowling Green and the sale of said furniture, he will corroborate substantially Mr. E. A. Greer, who has just testified as to the effect of the freight rates on the successful operation of said furniture plant; and that he is still engaged in said business, but only on a very small scale, and has practically had to give up that line of business. He will state further that as to shipping furniture to Elizabethtown on the Louisville & Nashville Railroad between Bowling Green and Louisville, that the freight charges equal the freight charge from Bowling Green to Louisville plus the freight charge from Louisville back to E. Town, in order to put this furniture back into E. Town. He will further state that he is a contractor, buyer and dealer in lumber, and that he can ship pine lumber of which

he orders quite a good deal from the South, to Louisville via the main line of the L. & N. Railroad, cheaper than he can ship the same lumber to Bowling Green, Kentucky, a less charge being made for the longer haul than for the shorter, the shorter being included within the longer, and the shipment going in the same direction over the same line, and that this difference in charge is material.

362 Mr. Colston: We will admit that Mr. Kister will testify that he is of the age and residence and occupation stated; that he would testify with respect to the effect of freight rates on the manufacture of furniture at Bowling Green substantially as Mr. Greer has testified; that he would testify as indicated by counsel for complainant as to rates on pine lumber from the South to Bowling Green and Louisville, respectively.

Mr. Thomas: That is correct.

Examiner Boyle: Mr. Connell, have you anything to say in regard to this stipulation?

Mr. Connell: No, sir.

Examiner Boyle: Is that your case, or is there anything further?

Mr. Thomas: I would like to take Captain Bewley's testimony. I would do it any time to accommodate Mr. Colston, if I could catch him any night.

Examiner Boyle: Who is Captain Bewley?

Mr. Thomas: Captain Bewley was the master and manager of the steamer Sun, when it was in operation. Also, the steamer Gayoso; has spent practically his entire life in operating boats on the Green and Barren Rivers, and the Cumberland, Tennessee and Ohio Rivers.

Examiner Boyle: And what would you propose to prove by him?

Mr. Thomas: I would propose to prove by him that freight could be handled on the Green and Barren Rivers as cheaply or cheaper, considering the transportation, than it could on the Cumberland—considering the conditions of that river.

Examiner Boyle: Is there anything further?

Mr. Thomas: Yes, I would expect to prove by him the conditions as to freight rates by the other line of boats by the operations testified to here by the other witnesses.

Examiner Boyle: You mean the actual amount of such freight rates?

Mr. Thomas: No, I mean the condition about cutting the rates all to pieces while he was operating the Sun.

Examiner Boyle: That was admitted, I think, or was not contradicted.

Mr. Thomas: I will also prove that he knows the conditions of the Cumberland and of the Green and Barren Rivers, and I think I could prove by him that freight could be handled on this river successfully at the rate of from twelve to fifteen cents a hundred; that is about the substance.

Examiner Boyle: That is entirely on the river situation; it looks to me like counsel might get together and work out a stipulation on this.

At this stage of the proceedings, there was a conference between all the parties, after which the following proceedings were had:

Examiner Boyle: Mr. Thomas, will you state why it is that Captain Bewley is not here?

Mr. Thomas: Yes, sir. Prior to this hearing notices were prepared by me as counsel for complainants, for each of the defendants, notifying them, on the day named, in Bowling Green,
363 Kentucky, that I would take the depositions of Captain E. W. Bewley and Captain W. S. Overstreet, to be read as evidence on behalf of complainants in this cause, because of the fact that Captain Bewley is employed constantly in running the daily mail boat with a Government contract to carry the mail, and has no other master of such boat. These notices were mailed to the Commission in Washington City, with the request that they be served on the respective railroads, as I had no means of telling the agent upon whom to serve the same for the various railroads, without tedious consultation of railroad manuals. I received a letter returning the notices, saying that the Examiner would be sent out to hear the cause, and Captain Bewley could testify then, in substance. Captain Bewley was notified of the hearing, which was first set for last Thursday, as I understand, and also of the hearing here today, and requested to be present. In the meantime, I understand he lost a rudder off of his boat. It was necessary to take it to some place and have it repaired. In the meantime, he engaged a gasoline boat to run temporarily carrying the mail while he went with his boat to Rumsey, Kentucky, to be repaired. When I learned that he was absent, I made every effort to get him here, and telephoned him on yesterday, urging him to return. He said it was impossible for him to get here before Wednesday night; that he would be here then and could give his deposition here after that.

Examiner Boyle: Now, as we hope to conclude this proceeding early tomorrow and do not care about waiting over tomorrow night for this one witness, whose testimony, I understand, is going to be quite brief, it is agreed by Mr. Colston, representing the Louisville & Nashville, and by Mr. Thomas, representing the Complainants, that Captain E. W. Bewley's testimony will be taken by deposition in the office of Thomas & Thomas, here at Bowling Green at 7:30 P. M. on Friday evening, December 1st, 1911. A copy of that deposition will be sent to the Commission, and a copy retained by counsel for complainant and counsel for the Louisville & Nashville Railroad, as I understand that none of the other defendants are to receive a copy of the record. Is there anything further now, Mr. Thomas?

Mr. Thomas: As stated this morning, I filed the affidavit of Mr. W. C. Sumpter with the Commission, in accordance with the rules of practice of the Commission, asking for a subpœna for Captain Lee Howell, to appear in person and testify in this matter at this hearing, and also for him to produce certain letter files, known as his boat files, on this occasion, for examination and for use as evidence in this cause. I received replies stating that it was not the

practice to issue subpœnas duces tecum until it became apparent that some of the records desired might be material to the issue. I heard nothing further in reference to the subpœna upon him to testify in person on this occasion. I should like to have him as a witness, and to introduce him as a witness, and to examine him in regard to the operation of the boat, and these freight matters; as it appears that he is both President of the Bowling Green & Evansville Packet Company and the General Freight Agent of the Louisville
364 & Nashville Railroad Company, in the Evansville Division, and has occupied both places for a long period of years. Mr. Goodwyn, General Freight Agent of the Louisville & Nashville Railroad Company, stated this morning that Mr. Howell was quite ill, has been quite ill, has been to a sanitarium, and only recently returned to his home in Evansville, Indiana; was not able to be present in person upon this occasion to testify, and now states that he would not be able to give his deposition, he did not think, even at his home at Evansville, Indiana; is that right?

Mr. Goodwyn: Yes, sir.

Mr. Thomas: And that his condition is such that he thinks it would be harmful to take his deposition as he is just beginning to improve. I should not desire in any way to jeopardize the health of Captain Howell, but I think that his testimony would be material to this issue, and if at a later date, when his deposition can be taken, or his evidence heard, the Examiner or the Commission thinks that under the affidavit filed his deposition might throw light upon this issue, I should be glad to have his deposition or his testimony.

Mr. Goodwyn: Mr. Examiner, I would like to state that about six weeks or two months ago, Captain Howell wrote me stating that the condition of his health for some time had been such that he realized the necessity of having an operation performed, and before having that operation he desired to go North and consult some eminent specialists in Chicago and other places. He went on that trip, and ascertained that such an operation would be necessary. He then returned to Evansville, and after putting his affairs in order, not knowing what the termination of it would be, advised me of the fact that he would be away from Evansville indefinitely. He went to an infirmary in Chicago, had the operation performed. It was at first thought to be quite successfully and he seemed to be on a fair road to a speedy recovery; I then received a telegram, however, from his office, that he had a serious relapse, the wound had broken, he had experienced the loss of a great deal of blood, and they did not know what the termination of affairs would be. However, he rallied from the relapse, after remaining in the infirmary or hospital for some time longer, and was finally moved back to his home in Evansville, thinking that he would be more comfortable there with his own family about him, than in a hospital. Captain Howell had to be carried from the train to his home, and has been confined to his house—I don't know about his bed—ever since his return, and has not been at his office at all, and has undertaken to handle no business whatever since he got back to Evansville. I don't know the

character of evidence that Mr. Thomas will desire to present by means of Captain Howell, but I feel reasonably confident that anything Captain Howell might say concerning the Evansville & Bowling Green Packet Company could be said equally as well by Mr. Cornick, the Secretary of that Company, who is located at Evansville, and who, I am sure, would be glad to relieve Captain Howell of the physical burden that he would have to encounter in undertaking anything of this sort.

365 Examiner Boyle: I believe you stated that Captain Howell was a man of about seventy odd years of age?

Mr. Goodwyn: He is over seventy years of age, yes, sir.

Examiner Boyle: When Mr. Goodwyn takes the stand, if he does, tomorrow morning, upon cross-examination counsel for the complainants can interrogate him on such matters as he may deem proper and relevant concerning any facts relating to the operation of the packet line and his connection with the Louisville & Nashville Railroad, and after that I think we will all be in a better position to figure on what action should be taken with respect to the testimony of the witness.

CHARLES E. FULTON, was called as a witness, and having been duly sworn, testified as follows:

Mr. Colston: Please state your full name and residence, and say in behalf of what interest you appear in this proceeding?

Mr. Fulton: Charles E. Fulton, Chicago, Illinois; Secretary of the Chicago and Ohio River Committee, and we are representing the railroads north of the Ohio River, parties to this complaint, in so far as rates concerned from Chicago, South Bend, and Indianapolis, Ohio River crossings, to Louisville, Evansville, Cincinnati, Jeffersonville, versus to Clarksville or Nashville.

Mr. Colston: Do you, or not, mean from Ohio River Crossing to Bowling Green?

Mr. Fulton: I mean Ohio River crossings versus the rates to Clarksville and Nashville.

Mr. Colston: Please state what your duties are as Secretary of the Chicago and Ohio River Committee, and state, generally, what your experience has been in railroad traffic matters?

Mr. Fulton: I have been Secretary and Chairman of the Chicago & Ohio River Committee, for practically twenty years; that is a committee composed of the lines between Chicago and the Ohio River crossings interested in the handling of traffic between, first, Chicago and Indianapolis, Chicago and Evansville, Jeffersonville, New Albany and Louisville, next, between Indianapolis and Cincinnati, Jeffersonville, New Albany and Louisville; as also the matter of rates between Chicago and north bank of the Ohio River crossings, Cairo to Cincinnati, inclusive, applicable on traffic destined to or received from Southeastern territory. As Secretary of the Chicago and Ohio River Committee, practically serving as Chairman, I am also Agent for the Chicago and Ohio River lines in the promulgation of tariffs between the points before mentioned. Also

the compiler of monthly statistics for that particular territory, in the groups specified.

Mr. Colston: Have you read the complaint in this proceeding?

Mr. Fulton: Yes sir.

Mr. Colston: Please state in what paragraphs of the complaint you are practically interested, and concerning what traffic you desire to testify?

Mr. Fulton: Well, it would be paragraphs 3, 4, 5, 7, 9, 13 and 14, in so far as they make reference to the rates from Chicago,
366 South Bend and Indianapolis to Bowling Green, vs. to and from the same points to Clarksville and Nashville, Tenn.

Mr. Colston: Mr. Fulton please explain how rates are made from Chicago, South Bend and Indianapolis to Bowling Green and other interior points in Kentucky?

Mr. Fulton: There is no basis for making through rates from territory North of the Ohio River to interior Kentucky points excepting upon the combination of local rates to and from Louisville as the case might be, and Cincinnati and Evansville and Cairo, all owing to the geographic lay of the interior Kentucky points.

Mr. Colston: Please explain how rates are made from Chicago, South Bend and Indianapolis to Clarksville, Nashville and other stations in the so-called Southeastern territory and explain that territory.

Mr. Fulton: The Green Line territory or so-called Southeastern Territory aligns north of the Ohio River, covered by the following definition: South, the southern boundary line of the State of Kentucky, south on south of the main line of the Norfolk and Western Railroad, Roanoke & Norfolk, that is an imaginary line east to the Coast, east by the main line of the Illinois Central Railroad and the Mobile & Ohio Railroad to the Gulf, to Mobile, Ala., that is a section of competitive territory to which these proportional through rates are made applicable from Chicago to the north bank of the Ohio River crossings, versus, namely, Cairo, Evansville, Cincinnati, Jeffersonville, New Albany and Louisville Kentucky, does not enter into this at all in the manner of making through rates to or from the Southeast. The rates are made to or from the north bank of the river. The North bound proportional rates from Ohio River crossings to Chicago, Indianapolis, Milwaukee and points taking same rates in so far as the first six classes are concerned, are the same proportionately as they have been locally for you might say, the last thirty years, excepting that on the business from the southeast, in using those first six classes, the Southern classification is made applicable while from Ohio River crossings proper, the official application is made applicable. In the reverse direction, from Chicago to the North Bank of the Ohio River Crossings, applicable in this so-called Southeastern territory, which I have explained to you, previous to May 16, 1905, the local and proportional rates were the same: forty, thirty-four, twenty-five, seventeen, fifteen and twelve. That basis of rates from Chicago was a differential basis over St. Louis of twelve, eleven, five, three, three, two which means that the proportional rates from St. Louis to Cairo and Evansville, applicable

to this so-called Southeastern territory were, 28, 23, 20, 14, 12, and 10. During the fore part of 1905 and in order to more clearly equalize the through rates from Eastern Atlantic Coast points, as also through Interior New England points, and this so-called Southeastern Territory, a representative of the railroads leading from Chicago, St. Louis Cairo and Evansville, thought it was necessary to reduce that proportional basis from St. Louis, Cairo and
367 Evansville applicable on this Southeastern territory. They did so.

Mr. Goodwyn: You mean from St. Louis to Cairo?

Mr. Fulton: St. Louis to Cairo and Evansville as proportional rates on this Southeastern territory, in order to maintain the same differential, the same proportion, namely, a reduction of 5, 4, 3, 2, and 2 and corresponding rates were reduced from Chicago to Cairo and Evansville. Naturally, if the Northern territory wanted to get into the Southeast, they had to follow with the same proportional rates to the Eastern Ohio River gate-ways, Cincinnati, Jeffersonville and New Albany. That is what caused that 35, 30, 23, 13 and 10. They are really, you might say, not only proportional rates, but they are what has been considered for twenty five or thirty years as divisions of through rates on Southeastern territory traffic. It has nothing to — in any way, shape or manner with the rates to or from interior Kentucky points. I think it would be proper for me to say that if in answering this complaint of the Business Men's Association of Bowling Green, that if we should put in to Jeffersonville or New Albany, the rates applicable on Bowling Green, as we do on Clarksville or Nashville, it would be a physical impossibility to confine it to Bowling Green, it would have to apply to all Ohio River crossings, Evansville, to the east, on all Kentucky business. I think I must go back a little bit further and state that as there is no basis for through rates to or from interior Kentucky points, the general mileage scale of the Central Freight Association has been used since 1896. That is that 40, 34, 25, 17 and 12 basis for 300 miles between Chicago and Ohio River crossings. If the 35 to 10 scale is used locally it would have to be considered applying on interior Kentucky business, that would mean applying the 220 mile scale. If that was forced upon the lines North of the Ohio River by orders of the Commission, it would mean a general breaking down of the rates from the entire Central Freight Association territory. The Central Freight Association territory is that section of the country north and west of a line drawn from Buffalo to Pittsburg, thence on north of the Ohio River to Cairo; thence on and east of the Mississippi River to East Burlington; thence on south of the T. P. & W. R. R., to, from Burling to Pearia; thence on to the South, which, practically, as you notice, takes in a little of the Northwestern territory of New York State, the western one-eighth of Pennsylvania, all of Ohio, all of Indiana, all of the State of Michigan, but none of the territory in Illinois. The rates from Chicago to Cairo, Ill., or between other Illinois points are governed entirely by the Illinois Commissioners' Classification, and in so far as their first six classes are concerned their general merchandise rates,

their scale of rates locally, Chicago to Cairo, is a great deal higher than we maintain throughout the Central territory. For illustration, their rate is 46.6 to 14.5; our scale for 300 miles is 40 to 12.

Mr. Connell: That was the Illinois scale for 300 miles you quoted?

Mr. Fulton: No, that was the Central Freight Association.

Mr. Connell: 46.6 is the scale for 360 miles.

368 Mr. Goodwyn: 360 miles from Chicago, to Cairo.

Mr. Fulton: Yes sir, for practically the same distances from Cairo and into Interior Kentucky points, they apply on a mileage scale of 46.6, while you gentlemen are enjoying a mileage for 300 miles of 40 to 12. I want to go a little bit further, by saying, that if that was made applicable from Chicago to Ohio River Crossings, locally, it would naturally result in a reduction of the rates from Detroit, Toledo, Cleveland, Cincinnati; that reflects clear on back, goes on back to Pittsburgh to the Ohio River crossings, then it comes into interior and central junction points, say, for instance, like Springfield, Dayton, Hamilton, Pekin, Lyman, etc.,—reduce that and it would not only reduce it gentlemen to the Ohio River, but, it has its effect in the opposite direction, North, East, South and West.

Mr. Connell: Throughout that entire territory that you have bounded, what would be the result?

Mr. Fulton: The wanton throwing away of money for a little bit of one point down here in the interior of Kentucky. It could not apply to Bowling Green, Ky., and not apply to every point in the whole State of Kentucky.

Mr. Connell: You have stated the differences in the bases——

Mr. Fulton: If you will permit me, I would like to add a little further before you ask me. I want to say for the benefit of these business men of Bowling Green, Ky., that insofar as the rates from Chicago to South Bend and Indianapolis are concerned, to Louisville or Evansville, I have explained to you we have no right or authority or basis to make rates into interior Kentucky points, combinations, but you are enjoying privileges today that your competitors are not enjoying, which you claim as against Clarksville and Nashville, Tenn. I mean by that, Mr. Goodwin, for those classification purposes, has several hundred items in there that owing to their class rates it would run anywhere from second to fourth class, in the Southern Classification, would be first and second. I will illustrate that by saying that books, for instance, he makes car loads, Southern classification: it is first class. The first class proportional rate, Chicago to the River, is 35; under the official classification, in the 40 cent scale, it will be 25 cents. You are enjoying a 25 cent rate on business to Bowling Green, Ky. and 35 Chicago to the River on Clarksville and Nashville. Furthermore, there is fully sixty per cent of the commodity rates that are published in the tariffs, in which this complaint specifically refers to, that are nothing more nor less than the local rates from Chicago to the Ohio River crossings. That is in view of the fact that throughout the territory of the Central Freight Association, and using chemicals as an illustration, they originate in a scale from seventy to ninety per cent of the different

class rates. Seventy per cent of sixth class rate, or eighty per cent of fifth class rate, or eighty three and a third, as the case might be; petroleum products is ninety per cent, fifth class. That is not the case of proportional rates into Southeastern territory. So many of these chemicals will range anywhere, in the Southern
369 classification, from fifth to Class A. Class A, in so far as it affects the proportion north of the Ohio River, is the same as our sixth class.

Mr. Connell: It is a fact then, is it not, that the towns and cities in the Western part of Kentucky, whose rates base on Cairo, are not in as favorable position with respect to rates north of the Ohio River, as Bowling Green whose rates base on other Ohio River Crossings, less than Cairo.

Mr. Fulton: Yes, that is a fact.

Mr. Connell: You have explained how rates were made from Chicago, South Bend and Indianapolis, to interior points in Kentucky, and you have explained how rates were made from Chicago and South Bend and Indianapolis to stations in the so-called Southeastern territory. You have explained the territory and incidentally you have shown the reasons for the difference, to some extent. But I would like for you to state the reasons why you use proportional rates to the Ohio River in making rates for the so-called Southeastern territory, while you use local rates to the Ohio River on business moving to interior points in the interior of the State of Kentucky, and explain also the reason why you use the Southern Classification in one case and the official classification in the other case. I have reference in my question, particularly, to reasons of competition?

Mr. Fulton: Well, I was under the impression that I had explained that.

Mr. Connell: I think you did touch on it in your other explanation.

Mr. Fulton: This so-called Green Line or Southeastern territory, is competitive territory. St. Louis, to and from the Ohio River crossings, are competing into that territory, with the rates that are made from Boston, New York and Philadelphia; Chicago is competing with St. Louis on Ohio River Crossings; Chicago is also competing with New York. That is the reason—that is what forces those proportional rates and the application of the Southern classification. The Southern classification applies without exception from St. Louis and all Ohio River gateways, and it applies from Chicago to what is known as the Chicago rate territory, but it does not apply from the territory in the Central Freight Association east of the Indiana and Illinois state line, which has a sufficient classification in their local rates to the Ohio River. I think I explained one feature of it more particularly by calling attention to the fact that during the first part of May 1905, the St. Louis and Chicago lines interested in the handling of this traffic from Cairo and Evansville to the Southeast, thought that it was necessary to make a still further reduction in their proportion or their differentials in order to more nearly equalize the through rates that were in effect from the Eastern Atlantic cities, not only all rail but rail and ocean, and all ocean.

Mr. Connell: Briefly then, the reason for the difference is, that the Eastern Markets and Western markets, are engaged in a fierce competition in Southeastern or Green Line territory, which
370 you have described, while they are not engaged in such competition in Kentucky territory.

Mr. Fulton: That is dead right, yes sir.

Mr. Connell: In paragraph 13 of the Petition, complaint is made of the rate on cattle and hogs, from Bowling Green to Chicago, Ill., as compared with the rates to Chicago on cattle and hogs from Nashville, are the lines represented by you interested in any way in that fact?

Mr. Fulton: Not in any way, shape or manner. And I think at the time that was drawn up, they overlooked the fact that our rate locally between Ohio River and Chicago is the same as it is proportionally; in other words, we get the same amount of revenue on a car load of live stock from Evansville, Cincinnati, Jeffersonville, or New Albany, to Chicago, on coming from Clarksville or Nashville or Birmingham or Atlanta, or any other Southeastern point in that territory, as described previously, as we get on a car of live stock coming from Bowling Green, and we get the same in the reverse direction; our rates apply in both directions.

Mr. Connell: I believe you have touched on this matter in part, but I am going to ask you, in order that it may more clearly appear, what the facts are; if the lines you represent, as the result of this proceeding, were compelled to reduce the rates between Chicago, South Bend and Indianapolis and the Ohio River crossings, on business coming to Bowling Green, what would be the result of such reduction, could it be confined to that particular point?

Mr. Fulton: I would like very much for you to ask that question of the Examiner. It is an interstate commerce question: Can we have proportional rates to the Ohio River to Bowling Green, Kentucky, and not apply it for Frankfort or Lexington, or any of those other points? We would have to apply the same rate to all Ohio River crossings to all interior Kentucky points, and as before stated, if we did it, it would mean that all the rates from other territory would have to be correspondingly reduced, because the 35 to 10 scale practically amounts to what a 220 mile scale is between the Central Freight Association points, and if that was adopted or put in use by orders of the Commission, it would mean that we should have them to follow throughout the whole entire territory of the Central Freight Association; they could not withstand it.

Mr. Goodwyn: Your rates north of the river, they are all made one in relation to another?

Mr. Fulton: Yes sir.

Mr. Goodwyn: Every one from one portion of your territory to another portion of your territory?

Mr. Fulton: Yes sir.

Mr. Goodwyn: And if one changes you change them all?

Mr. Fulton: It automatically follows.

Mr. Colston: You have testified that you are Secretary of the Chicago and Ohio River Committee, and acting in that capacity for

a number of years, attending the meetings that fix the rates throughout a large extent of territory and applying on a very large
371 volume of traffic; I would like for you to state what other experience you have had in traffic matters and rate matters, in passing upon the reasonableness of rates and the adjustment of rates?

Mr. Fulton: I have been connected for 33 years with the Chicago, Indianapolis and Ohio River lines; 28 years I have been with the different freight associations; 26 years I have been in Chicago, had charge of the Chicago & Ohio River Committee of the Central Freight Association; I am also chairman of what is known *of* the Mississippi Valley Freight Association, which is compose- of nine of the railroads from Chicago to St. Louis *to* Ohio River crossings, and have the handling and making of rates subject to the concurrence of our Southern lines, from Chicago to Milwaukee, Peoria and Springfield groups, to Memphis, New Orleans group, and Jackson and Meridian group. I am also Secretary and preside at meetings of the Chicago Freight Committee, which is an auxiliary of the Central Freight Association, and is composed of the 14 eastbound roads interested in the Eastern and Central Freight Association traffic from Chicago and trunk line business. I am also agent, and supervise the issuing, promulgation and distributing of sixteen different freight tariffs, and which are here mentioned very specifically in this complaint. I would imagine that with those number of years of experience I might be able to form some degree of an idea as to what would be done with those rates if they would be changed from Chicago to Bowling Green.

Mr. Colston: Now, Mr. Fulton, in the light of your railroad experience and knowledge of rates generally, I would like for you to say whether or not you consider the rates from Chicago, Indianapolis and South Bend to Bowling Green, Kentucky, and the rates from Bowling Green to such points covered by this complaint, as you are interested in it, are reasonable in and of themselves?

Mr. Fulton: Well, I would say that in and of themselves they would appear to be reasonable, for the reasons that I have given; futhermore, I fortify that opinion by the fact that I understand Indianapolis, interior Indiana and Ohio points are competing for interior Kentucky business, that is contiguous to Bowling Green, Kentucky, and for which they desire that point to be a jobbing point and compete for business, Indianapolis, Connersville, Richmond, or you might say any large junction point a hundred miles north of the Ohio River, have made no complaints in any way, shape or manner, as to the through rates from those points to Bowling Green, Kentucky, no more than they have perhaps complained occasionally, several other points, and with the explanation as has been given, that it is purely a local territory, the basis for making these rates stops at the Ohio River, they cannot go beyond it, as combination rates, for that reason, my opinion would be that it would appear to be they are fair within themselves—they really are North of the Ohio River.

Mr. Colston: And as compared with rates in similar or competing territory, the rates south of the Ohio River are, in your opinion, reasonable, in and of themselves?

Mr. Fulton: Yes sir, I think they are.

372 Mr. Colston: The rates prevailing upon and under similar circumstances and conditions as they have applied to and from Bowling Green?

Mr. Fulton: Yes sir.

Mr. Connell: Mr. Fulton, the rates from all these points named in this complaint, namely: Jefferson, Chicago, Indianapolis, are made according to the C. F. A. scale, are they not?

Mr. Fulton: Yes sir.

Mr. Connell: Combinations on the Ohio River?

Mr. Fulton: Yes sir.

Mr. Connell: That portion of the rate applying north of the River being the same, whether freight is destined to Bowling Green or Nashville or Clarksville?

Mr. Fulton: As far as Jefferson is concerned, it is, yes.

Cross-examination:

Mr. Thomas: What committee is this you say you are Secretary of?

Mr. Fulton: Chicago and Ohio River Committee, it is composed of at least seventeen lines interested in the handling of traffic between Chicago and the Ohio River.

Mr. Thomas: And this proportional that you have mentioned constituted the proportion of the rates that those lines get for handling the traffic to the Ohio River; is that correct?

Mr. Fulton: Yes sir.

Mr. Thomas: Coming into territory in Kentucky?

Mr. Fulton: Going through that territory, not into it.

Mr. Thomas: I am going to ask another question on that, coming from these Ohio River points into Kentucky, the rates to Bowling Green, for instance, would be the rates to those points plus the local rate to Bowling Green, Kentucky?

Mr. Fulton: Yes sir.

Mr. Thomas: There are no through rates to Bowling Green, Kentucky, from those points?

Mr. Fulton: No sir, except the combinations.

Mr. Thomas: Except the combinations, composed of this local and the proportional?

Mr. Fulton: No sir, composed of the local rates to the Ohio River by the official classification, governed by the commodity rates you have by the railroad line or the boat line, as the case might be.

Mr. Thomas: You say they are fair to these Ohio River points?

Mr. Fulton: I don't absolutely say fair, I feel that they are fair, for the reasons stated.

Mr. Thomas: Didn't you say they are fair to the Ohio River points?

Mr. Fulton: Yes sir, I say they are fair to the Ohio River points.

Mr. Thomas: As Secretary of this Committee did you have anything to do with making the rate beyond there?

Mr. Fulton: No sir, nothing to do with that, in any shape or manner, making rates beyond that.

373 Mr. Thomas: You say the Southeastern territory is composed of what—you said the Green Line Territory?

Mr. Fulton: The Green Line, or southeastern territory is that section of the county, is south to southern boundary line of the State of Kentucky, then following on south of the main line of the Norfolk and Western Railway, to Roanoke, which is an imaginary line to the coast and south of that territory, then east of the line of the Illinois Central Railroad through Jackson, then the Mobile & Ohio Railroad to Mobile.

Mr. Thomas: The whole of Tennessee in that territory?

Mr. Fulton: Yes sir, the whole of Tennessee is in that territory; and that southeastern territory is subdivided by the Southern Associations, for rate making purposes on bases into several different groups.

Mr. Thomas: Alabama in that therritory?

Mr. Fulton: Oh yes.

Mr. Thomas: Georgia?

Mr. Fulton: Yes.

Mr. Thomas: North Carolina?

Mr. Fulton: Yes, it is called the Carolina territory, it would apply the same rates of the Ohio River applied to that territory.

Mr. Thomas: Has Chattanooga the same rates as Nashville?

Mr. Fulton: To the Ohio River, yes sir.

Mr. Thomas: The same rate to the Ohio River?

Mr. Fulton: Yes sir, that is, north of the Ohio River, between Chicago and the Ohio River, either going or coming.

Mr. Thomas: Have they some rates coming through from Chicago and from East through the Ohio River to Chattanooga?

Mr. Fulton: Yes sir.

Mr. Thomas: Used the same rates?

Mr. Fulton: Yes sir, only to the Ohio River.

Mr. Thomas: Yes sir, that is what I am asking.

Mr. Fulton: I wish to say that I am giving only my testimony here in reference to rates to South Bend, Indianapolis, on Ohio River territory, that is all I can answer for.

Mr. Thomas: When you were speaking awhile ago of that, did you mean to say that the cause of the Nashville and Clarksville scale of rates published in this complaint was because of the Southeastern territory?

Mr. Fulton: I said the cause of reducing the differentials to St. Louis on that business on Clarksville and Nashville was the cause of reducing rates from Chicago to Cairo or Evansville correspondingly, or the same amount which had to necessarily follow to Cincinnati, Jeffersonville or New Albany, or else stay out of the Southeastern business.

Mr. Thomas: So every time you have spoken of a reduction of these rates, it was to an Ohio River point?

Mr. Fulton: Yes, sir, to the Ohio River.

Mr. Thomas: And you always stop there on this proposition?

Mr. Fulton: Yes, sir.

374 Mr. Thomas: You have had nothing to do with the rates below that?

Mr. Fulton: No, sir.

Mr. Thomas: So you do not say now that the reason for the Nashville and Clarksville rate is because they are in the Southeastern territory?

Mr. Fulton: I don't answer for anything South of the Ohio River.

Mr. Thomas: You would not undertake to say that if the Interstate Commerce Commission and the Courts have declared that the reason for the maintenance of the Nashville and Clarksville low rate is because of the transportation by river as an element, that they were both wrong?

Mr. Fulton: I cannot imagine that the Courts would say it, that it was necessarily a question of water competition, North, South, East and West, criss-cross, and every way you can make it.

Mr. Thomas: Suppose the Commissioners did say and the Courts did say that the lower rates that Nashville had was on account of her river transportation as an element, and that that was the basis of a decision, would you say that was the reason?

Mr. Connell: He would probably abide by the decision, without saying they were wrong.

Mr. Colston: I think you misunderstand the testimony that this witness is giving. He has explained the rates of the lower States as compared with the rates or the local rates in the Kentucky territory.

Mr. Thomas: I am asking if Nashville, being in the Southeastern territory, is not the cause of the lower rates of Nashville and Clarksville. You don't say that it is?

Mr. Fulton: I don't say that I know.

Mr. Thomas: You don't say that it is?

Mr. Fulton: No, sir, I don't say that I know; I don't know.

Mr. Thomas: Everything you said had sole reference, then, to reaching the Ohio River points named by you?

Mr. Fulton: Yes, sir.

Mr. Thomas: And what you said beyond that had nothing to do with the rate to Nashville?

Mr. Fulton: Not in any way, shape or manner.

Mr. Thomas: Not in any way, shape, or form?

Mr. Fulton: No, sir.

Mr. Thomas: You say the interior points in Kentucky, they are not in the Southeastern territory; what are they—does Kentucky stand alone?

Mr. Fulton: It stands by itself.

Mr. Thomas: Stands by itself, alone?

Mr. Fulton: I stated that is the dividing line between the territories north and south of the Ohio River, of which we are empowered to make rates.

Mr. Thomas: Interior Kentucky stands alone, to itself, in the freight traffic territory business?

375 Mr. Fulton: So far as the lines north of the Ohio River is concerned.

Mr. Thomas: What is interior Kentucky called?

Mr. Fulton: Open territory. I cannot answer for anything with the exception of those rates that I have mentioned.

Mr. Thomas: All right, stand back—What else you said about the rates in Kentucky than you have said just now as your last answer that you could not answer for anything but as to the rates to the Ohio River, all else you said about the rates to Bowling Green, and all that, was only argument?

Mr. Fulton: Well, it was only an opinion, based upon the fact in saying that I thought they were fair in themselves, as the fact that there is no complaint made from even competitive territory.

Mr. Thomas: To north of the Ohio River?

Mr. Fulton: North of the Ohio River.

Mr. Connell: In other words, then, you mean that the jobber located in Ohio, buying goods from Chicago and shipping them, we will say, to some point in Ohio, and reshipping them to a point in interior Kentucky, competing with a jobber at Bowling Green, had made no complaint?

Mr. Fulton: That is the point I wish to bring out.

Mr. Connell: What about the effect if the Chicago and Ohio River lines should withdraw from participating in these proportional rates, applying on traffic destined to Green Line territory throughout the Eastern Ohio River crossings gate way?

Mr. Fulton: They would be out of the business entirely.

Mr. Connell: The business would travel through——

Mr. Fulton: The business would travel through Cairo to Evansville, or via, East St. Louis from Cairo.

Mr. Connell: The Chicago and Ohio River lines could not expect to get any of it?

Mr. Fulton: The Cincinnati-Louisville lines would not get a pound.

Mr. Goodwyn: Mr. Fulton, the Southeastern territory that you have described, were the boundaries of that territory for rate-making purposes to the Ohio River defined by the Northern roads?

Mr. Fulton: The boundary line that I get is what the lines North of the Ohio River had always considered the Green Line or Southeastern territory, to which they applied to the Ohio River these proportional rates. It is not actually the boundary line or the territory of what is considered Southeastern territory under the legislation of the Southern line.

Mr. Goodwyn: I understand that, but so far as the rates, taking Chicago as a point of illustration, so far as the rates from Chicago to the Ohio River are concerned, on business coming to the South, this Southeastern territory, the boundaries of which you have described, was described by the Northern roads; am I right?

Mr. Fulton: Yes, sir, it was described by the Northern roads.

Mr. Goodwyn: The Southeastern territory, is that the ter-
376 ritory where the influence of the competition from the East, New York, Baltimore, Philadelphia, Boston, and New England territory is most keenly felt in the west at Chicago?

Mr. Fulton: Yes, sir.

Mr. Goodwyn: And therefore, to that territory, where the competition was most keenly felt, when the lines North of the Ohio River deemed it necessary to get their total rate into this highly productive territory in the South, more nearly in line with the rates from the East, they reduced the differentials upon which the totals were based on combination from the Ohio River?

Mr. Fulton: Yes, sir.

Mr. Goodwyn: Then, as Nashville and Clarksville are in that territory as referred to in reducing proportional rates, you naturally reduce the totals to Nashville and Clarksville; am I right?

Mr. Fulton: Yes, sir.

Mr. Thomas: You didn't reduce any rates south of the Ohio River, did you?

Mr. Fulton: No, sir, reduced the total.

Mr. Thomas: I caught that you reduced the proportion above the Ohio River, but he says that he stops at the Ohio River; you speak of the East competing with Chicago in this Southeastern territory, that you say covers Tennessee, Alabama, and South Carolina, which itself is cut up into various other sections; why couldn't the East and West also compete as to interior points in Kentucky for business in Kentucky, say Bowling Green, Kentucky, for instance? Is there any reason why Bowling Green should not be competed for?

Mr. Fulton: I will have to reiterate what I said awhile ago, by stating that I was here only representing the lines North of the Ohio River, in so far as the South Bend, Indianapolis and Chicago, were concerned; I cannot testify as to the Eastern territory.

Mr. Thomas: Is there any reason why Chicago and that section of the country should not compete in this territory for the business?

Mr. Fulton: We are willing to compete for it from Chicago; we have no authority to go beyond the Ohio River.

Mr. Thomas: So there, also, you just stop at the Ohio River?

Mr. Fulton: Yes, sir.

Mr. Thomas: You say there has been no complaint filed by any of the territory competing in here that you have heard of?

Mr. Fulton: Not that I have heard of.

Mr. Thomas: Do you gnow anything about the Foard Manufacturing Company, of Chicago, Illinois, that has a plant somewhere in Illinois?

Mr. Fulton: They have a plant at Michigan City.

Mr. Thomas: Vandalia, Illinois, is the plant. I believe I will get you to file, and make a part of your deposition in this case, the complaint of the Ford Manufacturing Company as to charges in freight on business to Bowling Green, Kentucky, through Evansville, Indiana.

Mr. Colston: I think if that is to be filed it can be filed as
377 offered, as an exhibit by counsel for complainant; it has no connection whatever between this complaint and the testimony given by this witness.

Mr. Thomas: He says there has been no complaint.

Mr. Goodwyn: He does not represent Illinois territory.

Examiner Boyle: He possibly might state that he is not so sure

that that is the complaint, and that he knows nothing about it being filed.

Mr. Thomas: You have heard of no complaint like that being filed?

Mr. Fulton: No, sir, I have heard of no complaint.

Examiner Boyle: Then you can offer it as complainant's exhibit.

Mr. Connell: Has that been filed?

Mr. Thomas: Yes, sir, here is the docket number—4279. Do you know of any such case pending before the Interstate Commerce Commission—Ford Manufacturing Company, complainant, against the Vandalia Railroad Company?

Mr. Fulton: No, sir.

Mr. Thomas: In which case the L. & N. Railroad Company has filed an answer?

Mr. Fulton: No, sir; where is the point of shipment?

Mr. Thomas: Vandalia, Illinois.

Mr. Fulton: It would not come before me. I would have no knowledge or record of it.

Mr. Thomas: Interstate Commerce Commission, Docket No. 4379. I will not put it in. They can take it up. It is there.

Mr. Connell: What rates and classification would apply on a shipment moving from Vandalia, Illinois, via the Vandalia, N. T. H. and L. & N.?

Mr. Fulton: If it moved by Evansville, Indiana, it would have the official classification rates, local rates to Evansville; if it moved from Vandalia to Cairo, it would have the Illinois Commissioners' rate and classification.

Mr. Goodwyn: I believe you stated you had nothing to do whatever with the rates from the East or trunk line territory to the Ohio River?

Mr. Fulton: Yes, sir.

Mr. Goodwyn: You know what they are in a general way?

Mr. Fulton: In a general way.

Mr. Goodwyn: Do you know what the first class rate from New York is to Louisville?

Mr. Fulton: I think it is ninety per cent. of the Chicago rate.

Mr. Goodwyn: No, it is one hundred per cent of the Chicago.

Mr. Fulton: One hundred per cent.

Mr. Goodwyn: Seventy-five cents, isn't it?

Mr. Fulton: Yes, sir.

Mr. Goodwyn: If the rate from New York to Bowling Green amounts, on the Ohio River combination, to seventy-five,
378 would be the first class rate used from New York to Louisville, the rate from Chicago does make only the Ohio River combination; what is the first class rate to Chicago?

Mr. Fulton: Forty cents.

Mr. Goodwyn: Then, on the basis of the combination, Chicago to Bowling Green, has a rate, as I understand you, of thirty-five cents less than New York?

Mr. Fulton: I don't understand that.

Mr. Goodwyn: I say if forty cents is the rate from Chicago to the Ohio River, and seventy-five cents is the rate from New York to the Ohio River, and both make a combination, Chicago has a rate to Bowling Green of thirty-five cents lower?

Mr. Fulton: That is right.

Mr. Goodwyn: That would enable Chicago to compete, I suppose?

Mr. Fulton: Yes, sir.

Mr. Goodwyn: Without any reduction from Chicago?

Mr. Fulton: Yes, sir.

Mr. Colston: As a matter of fact, you do know, do you not, that the lines you represent do not meet the same competition from the east in the Kentucky territory as they do in the southeastern territory, which you have described?

Mr. Thomas: He says he doesn't know anything about that.

Mr. Fulton: We do not have any competition to meet in local Kentucky—Where is there any?

Mr. Thomas: You mean by railroad?

Mr. Fulton: Yes, sir.

Mr. Thomas: There ain't any here; that is what we are here for.

Mr. Fulton: You want to make it competitive?

Mr. Thomas: You say there is not, and we say there must be some.

Mr. Connell: I would like to ask you a question here.

Mr. Thomas: I am not a witness.

Mr. Connell: In regard to this exhibit you wish to file. I just want to know what his purpose was to show by this exhibit.

Mr. Thomas: It is not filed as an exhibit—showing that there is complaint North of the Ohio River as to the rate into Bowling Green, Kentucky.

Mr. Colston: It is not from the territory of the witness.

Mr. Thomas: No matter, it is north of the Ohio River.

Mr. Connell: He testified that there had been no testimony as to unreasonable rates North of the Ohio River. He says here that the commodity rate of twenty-six cents per hundred pounds, as applied on this shipment from Evansville, Indiana, to Bowling Green, Kentucky, for a haul of one hundred and fifty-nine miles is unjust an-unreasonable, as compared with the eight and one-half cent rate for the haul of two hundred and eight and one-half miles, or one hundred and forty-six miles as above mentioned, and should not have exceeded a rate of ten cents per hundred pounds. The complainant in this case is using the rate north of the Ohio River as a just and reasonable rate and asking reparation on the rate south of the Ohio River on the basis north of the Ohio River.

379 Mr. Thomas: I say, that is the complaint of a jobber and shipper north of the Ohio River on the rate to Bowling Green.

Mr. Connell: But he sets out in his complaint that his attack is made on the rate south of the Ohio River.

Mr. Thomas: He is complaining north of the Ohio River very much the same situation that we are speaking of from the South, so we are hitting it from both sides.

Mr. Connell: I cannot understand how he is, because he sets out

specifically that that portion south of the Ohio River is unreasonable compared to that North of the Ohio River.

Mr. Thomas: Did the witnesses testify today, so far as they know, that the rates north of the Ohio River, that they didn't konw that there was anything wrong with them, but they complained of the aggregate rate. He is setting out that the injustice is that you go beyond the Ohio River point.

Mr. Connell: That goes to show that Mr. Colston does not know now of any complaint of the rate North of the Ohio River. This gentleman that filed this complaint says the same as each of the gentlemen I asked today, that he didn't have any complaint of the rates North of the river.

Mr. Thomas: I saw that all the time. But it just shows that somebody North of the Ohio River is hitting it from that side, and we are hitting it from this side.

Examiner Boyle: It is a fact, Mr. Fulton, that there is other competition to be considered in the making of freight rates besides carriers' competition?

Mr. Fulton: Yes, sir.

Examiner Boyle: Such as market competition?

Mr. Fulton: Yes, sir, market competition.

Examiner Boyle: And competition between cities?

Mr. Fulton: Sure.

Examiner Boyle: It has been testified that there is competition, however, between Bowling Green and Connersville and Pittsburgh. Might not a situation arise that would entitle that to some consideration?

Mr. Fulton: I imagine so. Might I make a remark: I don't know whether it amounts to anything or not. But I think there is more business between Chicago and Nashville in one month than between Bowling Green and Chicago in six months.

Examiner Boyle: How about Clarksville?

Mr. Fulton: Clarksville does not send quite as much stuff between Chicago and Clarksville as between Chicago and Nashville.

Mr. Thomas: Not quite; is that the language you use?

Mr. Fulton: Yes, sir.

Mr. Thomas: You are moderate.

Examiner Boyle: So, regardless of the system of rate-making existing for eight or ten years, that would not be conclusive of the fact that such a system were reasonable?

Mr. Fulton: The conditions are just the same today as they have been fifteen years ago—twenty five years ago, with the exception of the reduction of fifty four to thirty two, etc.

380 Mr. Connell: Perhaps you would better put this in the record: How do the rates made by F. C. A. scale compare with other rates on other territories?

Mr. Fulton: They are on a much lower basis, much lower than in the State of Kentucky or other States.

Mr. Connell: The C. F. A. scale is, in other words, the lowest basis known?

Mr. Thomas: That is the central Freight Association?

Mr. Fulton: Yes sir, and Chicago to Ohio River points; it doesn't go beyond the Ohio River.

Whereupon at 10:30 P. M., an adjournment was taken until Tuesday Morning, November 28th, 1911.

TUESDAY, November 28, 1911.

R. C. DUNCAN, was called for further examination, and having been previously sworn, testified as follows:

Mr. Thomas: When you was on the stand yesterday, I overlooked to ask you a question or two. What is the name of the father of Mr. Jeff Williams, who is the Superintendent of the Evansville & Bowling Green Packet Company?

Mr. Duncan: I am not sure, I think it is Mr. R. T.—I don't know.

Mr. Thomas: You know him, do you?

Mr. Duncan: Yes, sir.

Mr. Thomas: Are there any brothers or any other sons of his working for the Evansville & Bowling Green Packet Company?

Mr. Duncan: Yes, sir—Jeff, Billy and Tom and Edgar—four sons; that is all I know of.

Mr. Thomas: About the time the Sun ceased to do business in the river here, did you have any conversation with Mr. Williams?

Mr. Duncan: Yes, sir.

Mr. Thomas: In which he said that he was one of the owners of the Evansville & Bowling Green Packet Line?

Mr. Duncan: Yes, sir.

Mr. Thomas: State when and where the conversation took place?

Mr. Duncan: I was a passenger on his boat, and he was captain of his boat, one of his Green River boats.

Mr. Thomas: Evansville and Bowling Green Packet Company?

Mr. Duncan: Yes, sir, went by that title. And I, by reason of the new condition, was considerably wrought up over it, and was talking to him about it, and he told me something like this: This is the substance; I cannot repeat it verbatim: "You Bowling Green people think the railroad owns the boats; you are wrong about that; the railroad company doesn't own the boats; they belong to me and to Captain Howell, or my sons and Captain Howell" or something like that. "But the railroad guaranteed us against loss, in making this fight."—the fight that we had been talking about in which the Sun was put out.

Mr. Thomas: Were you at that time in the grocery business here?

381 Mr. Duncan: Yes, sir.

Mr. Thomas: That was on one of these packets while you were a passenger?

Mr. Duncan: Yes, sir.

Mr. Thomas: And immediately after the Sun had gone out of business?

Mr. Duncan: Yes, sir, soon after.

Cross-examination:

Mr. Colston: That conversation had reference merely to the transactions during the competition of the Sun, did it not?—the fight that you had reference to?

Mr. Duncan: Yes, sir, that is my impression about it, to get control of the river—control of the boats on the river.

Mr. Colston: It didn't have any reference to a continuing agreement or guarantee?

Mr. Duncan: No, I don't know that it did.

Mr. Goodwyn: That took place in 1901?

Mr. Duncan: I don't remember what year, sir.

Mr. Goodwyn: Was it just after the discontinuance of the Sun?

Mr. Duncan: Soon after.

Mr. Goodwyn: It was, I believe, in 1901?

Mr. Duncan: I don't know the year.

Mr. Thomas: The record shows that it was in 1901.

Examiner Boyle: You don't know the exact nature of the agreement, that is, to what extent the railroad would indemnify the packet line?

Mr. Duncan: No sir.

Mr. Thomas: I understand you to say, though, that they were to indemnify them against any loss in making the fight against the Sun?

Mr. Duncan: Yes, sir.

—, ——.

Mr. Duncan: Well, my impression was that that would be the difference between their receipts and their less losses in making this fight, until they got control of it.

Mr. Duncan: Well, my impression was that would be the difference between their receipts and their losses in making this fight, until they got control of it.

D. M. Goodwyn was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Colston: Mr. Goodwyn, please state your name and residence, and say how long you have been connected with the Louisville & Nashville Railroad Company, and what positions you have occupied with that company?

Mr. Goodwyn: Name, D. M. Goodwyn. I have been connected with the Louisville & Nashville Railroad since November 1, 1894. I went with the road as Chief Clerk in the general freight office, and about 1898, I think, was appointed Assistant
382 General Freight Agent, and in 1900, or 1901, succeeded Mr. Compton as General Freight Agent upon his appointment as Traffic Manager.

Mr. Colston: Please state what experience you have had with the freight traffic department of other railroads?

Mr. Goodwyn: I first went into the railroad service in 1877, at Houston, Texas, and after serving for about a year as a clerk in the

passenger department of the Houston & Texas Central Railway, was transferred into the freight department, in 1878, and served in that department in various capacities as a rate clerk and as chief rate clerk, for a number of years; also, with the Galveston, Houston & Henderson Railroad Company a year, and back to the Houston & Texas Central, and then went with the Texas & Pacific Railway at Dallas, and from the Texas & Pacific Road I went to Memphis, Tennessee, and became a rate clerk, subsequently chief clerk to the General Freight Agent and Traffic Manager of the Louisville, New Orleans & Texas Railroad, which is now the Yazoo & Mississippi Valley line, belonging to the Illinois Central. I continued my service with that campony, L., N. O. & T., until the duties of the Traffic Manager of the line were extended over the old Chesapeake & Ohio and Southwestern Railroad running from Memphis to Louisville. I still continued service for the C. O. & S. W. — was separated, and along with the other valuable possessions and franchises of the L., N. O. & T. Railroad, I was bought by the Illinois Central when it purchased the line, and continued to serve as chief clerk in the office of the Assistant General Freight Agent of the Illinois Central at Memphis until November 1, 1894, when I went with the L. & N. at Louisville.

Mr. Colston: Please state what were and what are now your duties as General Freight Agent of the Louisville & Nashville Railroad Company and during your previous service with the railroad?

Mr. Goodwyn: Ever since I have been with the Louisville & Nashville Railroad, for slightly over seventeen years. I have been connected exclusively with the freight traffic department. As chief clerk in the office, I had general charge of its rates, subject of course to the direction of my superior officers. As assistant general freight agent, I was in immediate charge of the rate work, making all rates, carriage; had nothing to do with the solicitation of traffic. Since my appointment as General Freight Agent, of course the solicitation duties and matters of that kind have fallen upon me, in addition to the rate work, so that I think it can be said that during the entire period of my connection with the Louisville & Nashville Railroad, I have had supervision, and to a very large extent, direct and immediate charge of the making of its freight rates subject of course to the direction of my superior officers. During my service with other roads, and before I became connected with the Louisville & Nashville, I was in the rate department from as far back as 1878. I had charge of rates and to a very large extent, especially while on the L., N. O. & T. Railroad and the C. O. & S. W. Railroad, had charge of the making of rates themselves. So I was chief
383 clerk; I attended the meetings representing my superior to a considerable extent during and owing to his frequent and extended absences, and actually made the rates myself for the road.

Mr. Colston: In that experience, did you have occasion to measure the effect of water competition, and to decide upon the measures necessary or proper to compete with water competition?

Mr. Goodwyn: I was particularly concerned with that special matter during my service with the Louisville, New Orleans & Texas

Railway. That line, as you perhaps know, runs from Memphis to New Orleans, a distance of 455 miles, and practically parellels the Mississippi River. It has one branch that is almost immediately on the bank of the river, it might be said. And that part of its line from Baton Rouge to New Orleans, a distance of about 90 miles, is within a stone's throw, almost, of the river. At no point is it more than a few miles, as I now recall, from the river. In addition to that, certain portions of its line were competitive with the Yazoo and with the Tallahatchie Rivers, so that I was compelled by the force of circumstances to acquaint myself with that particular character of competition. And, I might add, that so far as the Louisville, New Orleans & Texas Railroad was concerned, the making of its freight rates resulted in a somewhat different ending from the making of freight rates up in this territory in competition with the river, in that there have not been for a good many years anything more than a casual direct competition with the river; between Memphis and New Orleans. There are no through boats at all today. Boats that formerly operated on the Mississippi River, carried annually from one to two hundred thousand bales of cotton to New Orleans; they carry none now, and haven't carried any in twenty years; in other words, the boats have practically been eliminated, and the condition down there is one of potential competitive rather than actual.

Mr. Colston: Are you familiar with the rates complained on in this case and with the circumstances and conditions generally which surround the transportation of traffic to and from Bowling Green, Kentucky, and other points on the Louisville & Nashville Railroad system?

Mr. Goodwyn: I am, sir.

Mr. Colston: Have you analyzed the complaint made by the Bowling Green Business Men's Protective Association, of Bowling Green, Kentucky in this case; if so, please state what particular rates or classes of business it covers?

Mr. Goodwyn: Yes, sir, I have analyzed the complaint, and I think perhaps we might get it before us all plainly if I state the result of that analysis. It covers rates to and from Bowling Green, Kentucky, as compared with other rates, as follows: To Nashville, Tennessee, from Chicago: Paragraphs 5, 7 and 14; to Nashville from New York: Paragraphs 6 and 7; to Nashville from St. Louis: Paragraph 8; from Nashville to various points on a number of commodities: Paragraph 9; to Clarksville from Chicago: Paragraphs 7 & 14; to Clarksville to New York: Paragraphs 6 & 7; from Clarksville from St. Louis: Paragraph 8; to Clarksville from various
384 points on a number of commodities: Paragraph 9; to Louisville, Kentucky from New Orleans on sugar: Paragraph 10; to Louisville, Kentucky, from Jacksonville, Florida, on oranges: Paragraph 12; from Nashville to various points North: Paragraph 11; from Nashville to Chicago on cattle and hogs: Paragraph 13; from Nashville to Atlanta, Montgomery and Jackson: Paragraph 15; from Evansville to Atlanta, Montgomery and Jackson: Paragraph

15; and from Louisville to Atlanta, Montgomery and Jackson: Paragraph 15.

Mr. Colston: Please illustrate, Mr. Goodwyn, by filing a map or otherwise, the relative situation and competition, and transportation facilities at Bowling Green, Nashville, Clarksville, Louisville and Evansville.

Mr. Goodwyn: Mr. Examiner, I have prepared and wish to file, as Exhibit No. 1 to my testimony, a blue print. My analysis of this complaint seems to show, and has led me to the conclusion, that it concerns very largely the situation South of the Ohio and East of the Mississippi River. I have not attempted, therefore, in the preparation of this map, to show anything beyond that particular territory. I have designated, however, the points to which I allude in the answer made to the last question, that is to say, Nashville, Clarksville, Louisville, Evansville, and Bowling Green. I have shown New Orleans because of that portion of the complaint relating to the sugar rate, and I have shown Jacksonville, Fla., because of that portion of it relating to the orange rate from Jacksonville. I have shown in red ink the Mississippi River North of Memphis: I have shown the Cumberland River; I have shown the Green and Barren Rivers; and I have shown the Ohio River from Cincinnati to its confluence with the Mississippi at Cairo. You will find the map exhibits the available routes by which freight is handled South of the Ohio River to and from Jacksonville, New Orleans, likewise New Orleans and Jacksonville to Louisville, Evansville, etc. I would like to mention right here that no attempt has been made in this map to show the available routes by which traffic moves form the East to Nashville, Clarksville, Bowling Green, or from the East to any of the different Ohio River crossings. A map to have exhibited information of that sort would have been so intricate as practically to destroy its value as an exhibit. I presume the Examiner and these other gentlemen are in a general way perfectly familiar with the multiplicity of routes in that territory. I might say right there, I had occasion a year or two ago to make some investigation as to the number of available routes using a different factor that was entirely practicable, though parts of the lines were alike, from New York to, I think it was New Orleans—no, not to New Orleans, but to Louisville. They were counted up, and the available routes from New York to Louisville was something in excess of thirteen hundred. I merely mention that to show why I should not undertake to describe for a minute all those various roads. I have not attempted to show the connections at Cincinnati, Louisville, Evansville and Cairo to and from Chicago. I have shown the principal
385 routes from Jacksonville, and I have shown the principal routes from Savannah to the Ohio River, because I would have occasion to refer to that Savannah feature a little later on during my testimony.

Mr. Colston: It is true, is it not, Mr. Goodwyn, that the map also shows Jackson, Montgomery and Atlanta, which are referred to?

Mr. Goodwyn: Yes, sir, I neglected to say that it shows also Jackson, Montgomery and Atlanta. But it is proper to add right there, it

does not show all the routes available from the Ohio River to those points: For example, it makes no exhibit whatever of the line of the Southern Railway and C., N. O. & T. P., from Cincinnati and Louisville to Atlanta. It does not show the available route from the Ohio River to Jackson, Mississippi, through Meridian. It does not show the available route that can be taken advantage of from Jackson, Mississippi, through Montgomery, the Southern Railway, over to Meridian, and thence to Jackson. It shows Jackson, Meridian, Atlanta, and Montgomery, but it does not show all the routes. It don't show the Mobile & Ohio line into Montgomery.

Mr. Colston: As illustrating the fact that the map does not show all the routes in the Southeast, it is true, is it not, that although the Tennessee Central, extending Easterly from Nashville, is shown without any connections, there are actually connections on the Tennessee Central reaching Southeastern and Eastern territory?

Mr. Goodwyn: Yes, sir; if you will look at the map just a moment, you will see a line that runs down from Cincinnati there, through Lexington, Junction City, and stops on the Cumberland River at Burnside. That is the Cincinnati Southern Railroad. It really goes right South almost in a direct line from there to Emory Gap, which is shown here as the terminus of the Tennessee Central Railroad, and connects at Emory Gap with the Tennessee Central, continuing on to Chattanooga, the C., N. O. & T. P. does, and at Chattanooga connects with the Alabama Great Southern, which runs down through Attalla and Gadsden to Birmingham. The Tennessee Central really has a short line from Emory Gap to another junction, where it makes connection with the Southern railway, that line having a branch over there and extending from Knoxville down to Chattanooga. I have prepared the map, however, more particularly with respect to the L. & N.'s concern in the complaint, those other lines not being particularly mentioned.

Mr. Colston: The heavy white lines on the map represent the lines of the Louisville & Nashville Railroad Company, do they not?

Mr. Goodwyn: Yes, sir.

Mr. Colston: Mr. Goodwyn, please explain the location and circumstances and conditions as to transportation of Bowling Green, Kentucky.

Mr. Goodwyn: Bowling Green, as I understand it, sir, is the county-seat of Warren County; it is located on the main line of the Louisville & Nashville Railroad, 114 miles south of Louisville, and 73 miles north of Nashville. The Memphis line of the Louisville & Nashville Railroad begins at Memphis Junction four miles south of Bowling Green, extending in a southwesterly direction to
386 Memphis, Tennessee, passing through Clarksville, Tennessee, on route, that point being 64 miles from Bowling Green and 199 miles from Memphis. Bowling Green is also situated at the head of navigation, on Barren River, which empties into the Green River at Woodbury, the Green in turn emptying into the Ohio at a point near Evansville, a distance by river from Bowling Green to Evansville *is* 190 miles according to my information. The population of Bowling Green, by the Census of 1910, was 9,173.

Mr. Colston: Please explain the location and the circumstances and conditions as to transportation and competition of Nashville, Tennessee.

Mr. Goodwyn: Nashville is located also on the main line of the Louisville & Nashville Railroad, 187 miles south of Louisville, 122 miles North of Decatur, Alabama, and 622 miles north of New Orleans, our southern terminus. It is also located on the Nashville, Chattanooga & St. Louis Railway, 151 miles from Chattanooga, a point on the Tennessee River, 168 miles from Hickman, Kentucky, a point on the Mississippi River, and 239 miles from Memphis on the Mississippi River. That 239 miles, I should say, is the N., C. & St. L.'s distance, that of the L. & N. being slightly longer. Nashville is also located on the Tennessee Central Railroad, 163 miles from Emory Gap, where it connects with the C., N. O. & T. P. Railroad, 166 miles from Harriman, where connection is made with the Southern Railway, 56 miles from Clarksville, Tennessee, where the Tennessee Central crosses the Louisville & Nashville Railroad, and 85 miles from Hopkinsville, Kentucky, where it connects with the Illinois Central Railroad, and also connects again with the L. & N. Nashville is also located on the Cumberland River, slightly over 200 miles from Paducah, and approximately the same distance from the head of the navigable waters on the Cumberland River in the vicinity of Burnside, Kentucky. The 1910 Census gives the population of Nashville, Tennessee, as 110,364.

Mr. Colston: Please explain the location and circumstances and conditions as to transportation and competition of Clarksville, Tennessee.

Mr. Goodwyn: Clarksville, Tennessee, is located on the Memphis line of the Louisville & Nashville Railroad, 199 miles from Memphis, 63 miles from Nashville via the L. & N., 124 miles from Evansville. It is also located on the Tennessee Central Railroad, 56 miles from Nashville by that line, and 29 miles from Hopkinsville, Kentucky, where the Tennessee Central connects with the Illinois Central Railroad. Clarksville is also located on the Cumberland River, approximately 150 miles from where it empties into the Ohio River near Paducah, and probably 60 miles from Nashville by river. According to the United States Census of 1910, Clarksville had a population of 8,548.

Mr. Colston: Please explain in like manner the location, circumstances and conditions as to transportation and competition of Evansville, Indiana?

Mr. Goodwyn: Evansville, Indiana, is located on the Ohio River, and in addition to the boat lines operating in that river, it is
387 served by the following railroads: The Louisville & Nashville Railroad, from the south and from the north; the Louisville Division of the Southern Railway, from the east and from the west; the Illinois Central Railroad from the north and south; the Chicago & Eastern Illinois from the north; the Evansville & Indianapolis Railroad from the north; the Cleveland, Cincinnati, Chicago & St. Louis, commonly called the Big Four, from the north; the Louisville, Henderson & St. Louis Railway from the east. The

United States Census for 1910 gives the population of Evansville as 69,647.

Mr. Colston: Please explain, in like manner, the location and circumstances and conditions as to transportation and as to competition of Louisville, Kentucky.

Mr. Goodwyn: Louisville, Kentucky, is located on the Ohio River, and in addition to the various boat lines operating on that river, it is served by the following railroads: The Baltimore & Ohio Southwestern; the Chesapeake & Ohio Railway; the Chicago, Indianapolis & Louisville Railway; the Illinois Central Railroad; the Louisville & Nashville Railroad; the Louisville, Henderson & St. Louis Railway, the Pittsburg, Cincinnati, Chicago & St. Louis Railway; and the Southern Railway. Its population is given in the 1910 Census, as 223,928.

Mr. Colston: Louisville is also served by the Cleveland, Cincinnati, Chicago & St. Louis Railway, known as the Big Four, is it not?

Mr. Goodwyn: Yes, sir, Louisville is also served by the Big Four. The Pittsburg, Cincinnati, Chicago & St. Louis is commonly called the Pan Handle, of Pennsylvania.

Mr. Colston: Then, if I understand you correctly, there is both river and rail competition at Nashville, Clarksville, Evansville and Louisville, while there is river competition only at Bowling Green?

Mr. Goodwyn: Yes, sir, that is correct.

Mr. Colston: Please say what has been, and is now, the character of the river competition at Nashville and at Clarksville, as that competition affects any of the rates covered by the complaint in this case.

Mr. Goodwyn: Well, in answer to that question, I will probably have to go back into ancient history, and I would like to say that in doing so I am not, as a matter of course, testifying of my own personal knowledge, but I am testifying from the records, which are available and which have been examined by me, and which, in some cases, are matter of sworn testimony in various litigation that has taken place before the Commission. So that if any of this history should be challenged, the sources from which it is derived can easily be produced to demonstrate its correctness.

Mr. Thomas: Just so you don't go back beyond our horse railroad, it is all right.

Mr. Goodwyn: The Cumberland River is a navigable stream for boats of considerable size for the greater part of the year, and for tows pretty much all the time. Prior to the construction of any railroad at Nashville through boats were operated between Nashville and the Ohio River to St. Louis, New Orleans, Louisville, Cincin-
388 nati, and in some instances, Pittsburg. Of course, passing Clarksville on route to and from Nashville. These boats handled western produce, grain, flour, hay, merchandise; handled likewise cotton products in the South, Nashville being a recognized concentrating re-shipping and jobbing market of great importance in those days. The Census of 1850 gives the population of Nashville at 10,165 at that time. It was to serve this extremely important concentrating and distributing interest that the Nashville & Chattanooga Railroad was built. I read here into the record from an

affidavit filed by the Vice-President and Traffic Manager of the Nashville, Chattanooga & St. Louis Railway, in the so-called Duncan case.

Mr. Colston: That was before the Commerce Court, was it not?

Mr. Goodwyn: It is before the Commerce Court now. "The building of the Nashville & Chattanooga Railroad was projected directly for the purpose of connecting the West with the South, the design being to supply the missing link between Chattanooga and the Ohio River, by constructing a line of railway to the headwaters of the Cumberland River at which point connection could be had by packets plying on said river and on the Ohio and Mississippi Rivers with the railways already in operation between Chicago, the Lakes and Cincinnati, Louisville, Evansville and Cairo, and in order to provide this short route to the West, and to secure a western outlet for the lines of railway previously built from Charleston, Wilmington and Savannah, via Atlanta, to Chattanooga. The construction of the Nashville, Chattanooga & St. Louis Railway was largely aided by stock subscriptions made by the cities of Charleston, Columbia and Augusta. In this connection, and bearing upon the reasons leading to the construction of this railroad, as well as the conditions then prevailing, both in Tennessee and in the States further South, the following quotations are made from the early records of the Nashville & Chattanooga Railway: 'I give the amount and value of all kinds of agricultural and manufactured articles produced and shipped from the immediate vicinity of contemplated railroad: 500,000 sacks of corn, mostly from Nashville, and all from the Cumberland River, two and a half bushels to the sack. In agricultural products Tennessee stands in the front rank with the great States of New York and Ohio, notwithstanding the former has a population of nearly three to one and Ohio two to one. There is one fact with regard to the Commerce of our country that will operate to give at an important season a very heavy trade to this railroad is made, and that is at the breaking up of all the northern waters, a vast amount of corn, pork, flour and wheat is poured into New Orleans. A good steamer would reach Nashville from St. Louis in forty hours, when she would be five or six days to New Orleans. I will here assure you that the Cumberland River is quite equal to the Ohio below Louisville, and is navigable usually eight months in the year for fine boats, and for the balance for smaller steamboats.'" These are extracts from a letter written by V. K. Stevenson to the Hon. John C. Calhoun, dated Nashville, December 12, 1846. Mr. Stevenson, by the
389 way, was on January 25th, 1848, elected the first President of the Nashville & Chattanooga Railroad. The Cumberland River was the admitted and then about the only connecting link or the best connecting link or highway between the Middle West, the West and the Northwest on the one hand, and the South and Southeast on the other. I have seen photographs taken of the wharf front at Nashville, many years ago, showing a large number of boats tiered two and three tied up there, either discharging or receiving freight. The United States Government has expended, or will in a comparatively short time complete the expenditure of about one million, five

hundred and ninety thousand dollars, in removing obstructions in the river and improving its operating devices. There are, of course, not so many boats now on the river as then, owing to the construction of railroads to and from Nashville and between Nashville and points beyond. And the natural results, which have almost invariably grown out of such construction. I refer to the superior character of transportation, the greater convenience in the matter of loading, the growth of warehouse and store construction along the lines of railroads, both at shipping points and terminal points, making that character of transportation, as a general rule, very materially better and more preferable to water transportation, and enabling the railroads to secure higher rates of freight for their service, than their river or water competitors are able to get. However, though there are fewer river steamboats on the river now than formerly, the Cumberland River Steamboat Company has about five or six boats in operation on the lower Cumberland. It maintains a weekly service between Nashville and Paducah, sometimes a service twice a week, and a weekly service between Nashville and Evansville, of course during the periods of Navigation. There are several tow boat lines in the Cumberland River, handling cross-ties out, of which there are yet a very large amount—I am sorry to say—and handling in anything that they can get, and at any rate that a shipper is willing to pay for that character of transportation. It is frequently very nominal. I have known grain to be hauled from the Ohio River to Nashville for four cents a hundred pounds. These various river craft handle considerable grain. They handled a couple of years ago from eight hundred thousand to a million bushels. The lines have two available barges for a capacity of ten thousand to fifteen thousand sacks of grain, respectively, or about thirty-five thousand bushels of grain in one tow. While water transportation is not used to so great an extent as formerly, the river and the facilities that it offers still exists, and the steamboat competition, therefore, may be said now to be largely potential, but it is certainly amply strong enough to prevent any material rate changes, independent of other conditions, prevailing for many years, and at this time, at Nashville. What is true of Nashville, so far as the river is concerned, is likewise true of Clarksville. When the L. & N. Railroad was first completed between Louisville and Nashville—to give you an illustration of what the situation was in those days—and that was in 1859—its first line of rates between Louisville and Nashville was established on a scale beginning at seventy cents, first class. In those days,
390 the freight rates of the Louisville & Nashville Railroad were made by a Board of Directors. The Superintendent of the road filed a petition with the board of directors concerning the Nashville rates, advising that the rates would not handle any business, and asking that there be granted him authority to reduce the rates and put them in line with the competition which actually existed at that point. That is the first instance that I know of in the history of the Louisville & Nashville Railroad where there was ever an attempt to meet water competition, and is certainly, so far as my knowledge extends, the very first instance on the

line of the L. & N. where the much-discussed long and short haul principle was departed from. I would like to add to that, that the Cumberland River, navigable for the greater part of the time to the Ohio, and for a considerable period of the year for two hundred or more miles above Nashville, was the reason which determined the location of Nashville, and that was determined long prior to the construction and operation of any of the steam railroads; and when Nashville was recognized as an important trading center. And right there, if you please, I want to read again from Mr. H. F. Smith, Vice-President Smith's affidavit in the Duncan case—H. F. Smith, Vice-President of the Nashville, Chattanooga & St. Louis Railway, in relation to the business of the Louisville & Nashville: "The strength of the Cumberland River as a water-way is fully evidenced by the reports made to the United States Government by its engineers, and in a recent report so made by the chief of engineers upon the improvement of harbors and rivers, it is shown that during the eight years ending 1910, there were only handled by the river below the City of Nashville two hundred and fifty eight thousand four hundred and sixteen tons of freight. For many years prior to the Civil War, regular lines of steamboats were operated between Nashville and the principal cities on the Ohio and Mississippi Rivers, between New Orleans and Nashville; there was doubly weekly service afforded by the steamboats Joe Johnson, Red Rover, Scotland and Talleyrand, between Paducah, Kentucky, and Nashville, and double weekly service was maintained by the steamboats Minnetonka and James Fisher, between Nashville and Cincinnati; weekly service between Nashville and Pittsburg via Cincinnati, Louisville and Evansville.

Mr. Thomas: To what period of time is that referred to?

Mr. Goodwyn: Many years prior to the Civil War. And between Nashville and St. Louis, weekly service. With these lines of steamers through routes were offered and through rates were made, between Nashville and Chattanooga, between the west and South, and in connection therewith and upon them the Nashville & Chattanooga Railroad solely depended for its through business, this comprising an important part of its traffic. This importance is evidenced by the following extract from the Twelfth Annual Report of the Nashville & Chattanooga Railroad, dated December 13, 1859: "'Much of the provisions and produce from Cincinnati and St. Louis going to the States south of us, was diverted by our road from the former by the ruinous competition in low freight offered
391 by the B. & O. from St. Louis, from St. Louis by the Tennessee River and Memphis boats taking freight at much lower figures than the Nashville boats charged.'" I want to read also, in connection with the importance of the Cumberland River and its influence upon the situation at Nashville, originally and now, an affidavit or a portion of an affidavit in the Duncan case, made by Mr. G. W. Asheraft. I read as follows: "I am seventy-five years of age. I have been on the river since I was 16 years of age, running between Louisville and Henderson for a considerable part of the time. In 1856 I ran as clerk on a boat from Louisville to New

Orleans. About 1858 I commenced clerking in the Louisville and Henderson trade, in which I remained three or four years. In 1863 and 1864, I was master of the steamer Mercury in the Government employ running between Louisville and Nashville, and in the Tennessee River also. The Mercury was chartered by the Government for purposes of war. The traffic carried by the Mercury for the Government consisted of commissary stores, corn, hay and grain. The grain was obtained on the Ohio River and some of it carried to Nashville, and some of it carried by the Tennessee River to Eastport. During this same time there were hundreds of other boats handling grain from Ohio River points to Nashville, and also by the Tennessee River. Nearly all the grain came from the Ohio River and Wabash River points. To give you an idea of the number of steamers bringing freight to Nashville, off of the Ohio River, the closest landing that I could at times make was at the old race track, which was two miles from the upper wharf; there were two wharves at Nashville—the upper and lower wharf. I have seen at a given time as many as four or five steamboats lying abreast at the wharf unloading, and other boats four or five deep awaiting their turn to be unloaded at the wharf. I have seen this condition at both of the wharves at Nashville. In January, 1871, I took charge of the coal mines at Dekoven, Kentucky, a point located on the Ohio River about sixty miles above the mouth of the Cumberland River. It was the custom of boats plying on the Ohio River and the Cumberland River to stop there for coal, and in that way I became familiar with the general character of their territory and their points of destination. I was manager of the coal mine for five years, and during that time the Cumberland River boats and the Tennessee River boats went up the Ohio River and the Wabash river for grain which they brought back by the mines where they coaled, and they were loaded down with this grain, and a majority of them destined to Nashville, some of them went to Johnsonville, Tennessee, where they had the same river rate." I will skip a portion and continue: "When I first quit the upper Cumberland I was in the employ of Captain Ryman, and he put me on the Silver Thorn, one of the boats running from Nashville to Evansville, Indiana. During the season of 1878 and 1879, I remained on the Silver Thorn; during the season of 1880 and 1881, I was on the B. H. Cook, running from Nashville to Evansville. During this period we handled a great deal of grain from Ohio River points to Nashville, which constituted prac-
392 tically three-fourths of the cargo. The Silver Thorn and the B. H. Cook made one trip a week each between Evansville and Nashville. The Nashville & Cairo Packet Company and the Nashville & Evansville Packet Company were then operated under one management. There were two boats running between Nashville and Cairo, and one in the Nashville and Evansville trade, and each of them made one trip a week. The two boats had a capacity of about four hundred tons each. It was the custom of boats running from Nashville to Cairo or Evansville that didn't have a full cargo at Cairo, to go as high as Shawneetown, Illinois, and other upper points, and get loads of grain for Nashville. This was frequently the case."

Then, I will resume. During that fifty years and up to the beginning of the Civil War, there were regular packet lines plying between the Ohio and Mississippi and Cumberland Rivers, between Pittsburg and Nashville, Cincinnati and Nashville, Louisville and Nashville, Memphis and Nashville, St. Louis and Nashville, and New Orleans and Nashville. As late as the early '70's, the railroad situation in the South was such that the competition of the railroads for the business was not felt by the steamboat interests, and until that time Nashville, Louisville and other river points were dependent upon the river transportation.

Mr. Colston: In connection with that matter, Mr. Goodwyn, I would be glad if you will explain briefly the situation which the Louisville & Nashville railroad found at Clarksville when it reached that point by acquiring the control of the present Memphis line; please state where the business interests were located, and what the effect of the river competition was at that point?

Mr. Goodwyn: The business interests, warehouses and stores, to a large extent, at Clarksville, were located on or near the river bank. The L. & N. Railroad, when it acquired that line, which now constitutes its Memphis Division, found that condition existing at Clarksville. It did not create anything of the sort. It found it there. It simply met the condition that it found. It did not create anything at Clarksvile in the way of rate adjustment. It undertook to meet what it found there and to provide, through its service, for meeting the competition in the Cumberland River at Clarksville.

Mr. Colston: I will ask you, also, Mr. Goodwyn, if you have available the annual report of the Louisville & Nashville Railroad Company for the fiscal year ended June 30, 1868, I believe, in which Mr. Albert Fink, General Superintendent, made some report as to the competitive conditions existing at various places on the line, and I will ask you to state what the General Superintendent at that time reported as to the competition at Clarksville and at Nashville, and what he reported, if at all, as to any competition existing at Bowling Green.

Mr. Goodwyn: I read from the Annual Report of the President and Directors of the L. & N. Railroad Company for the fiscal year ending June 30, 1868, and from that portion of the report presented by Mr. Albert Fink, General Superintendent, and commencing on page 43, I read as follows: "Up to the close of the war our road was operated exclusively as a local one; since then, and par-
393 ticularly within the past year, we have greatly enlarged our field of operation by means of our extensions and Memphis connection. The various railroad systems with which we have come in contact have multiplied our sources of revenue, and have opened up to us sections of country hitherto beyond our reach; formerly a mere local road, doing business between Louisville & Nashville, we are now competing with the various other transportation companies for the through traffic of the entire South, but this changed condition of our road, not generally understood, has an important bearing on the policy of the company. It may not be out of place, in connec-

tion with the consideration of last year's through traffic from this road, to review the principal sources whence our business is now obtained, together with the routes which at the different centers of trade, come into competition with us." Then follow the lists of the competitive points as referred to by Mr. Fink. He starts with Memphis and states the competitive character of the business at and via that point. He then mentions Clarksville, Tennessee. First, Cumberland and Ohio Rivers to Cairo, Evansville, Louisville and Cincinnati, and from all these points by rail north and east as above—the above referring to the north and east description in connection with the Memphis. He then follows with Danville, Tennessee, which, as you know, is where we cross the Tennessee River.

Mr. Thomas: That is going the other way?

Mr. Goodwyn: Down on the Memphis line. He then follows with Nashville. First, Cumberland river to all points, as from Clarksville; second, Nashville & Northwestern Railroad to Hickman and Mississippi River to St. Louis. Third, Nashville & Northwestern Railroad to Hickman, river to Cairo, Evansville, Louisville and Cincinnati. Four, Nashville & Chattanooga Railroad, thence east by the Air Line to Washington & Norfolk. Fifth, Nashville & Chattanooga Railroad to Chattanooga, Raleigh, Charleston or Savannah; thence to the sea north. He then gives Chattanooga, Atlanta, Americus, Augusta, Charleston, Savannah, New Orleans, Mobile, those points, however, not being reached, any of them at that time, directly by the L. & N. Railroad. He makes no mention whatever of Bowling Green, Kentucky. I presume you understand that Mr. Albert Fink, at that time Superintendent of the Louisville & Nashville Railroad subsequently was higher in the service of the company, left the road and went east, became associated with the trunk lines, was their first commissioner, I think, and Mr. Fink is responsible for the whole—certainly very largely—for the adjustment of freight rates that prevails now to this day between that territory of the United States which is the largest tonnage and revenue territory of the country. I refer to North of the Ohio River, as far as Canada; west as far as the Mississippi River; and East as far as the Atlantic Ocean. I wanted to mention that because I think it is proper that due weight should be given to any statement made by Mr. Fink.

Mr. Colston: Did that report refer to actual or potential competition?

394 Mr. Goodwyn: Actual.

Examiner Boyle: All I caught was the statement at Clarksville, that there were possibly roads there, nothing in that report to show the actual amount of that competition?

Mr. Thomas: No, sir, not a line.

Mr. Goodwyn: No, sir, he didn't undertake to state that.

Mr. Thomas: It might be assumed as a physical fact that Barren River was here at that time.

Mr. Goodwyn: I think that can be assumed.

Mr. Colston: It is a fact, is it not, that that report of Mr. Fink was made mainly with the view of showing the necessity of charg-

ing lower rates on through traffic to these competitive points than were charged or in effect on rates to local points?

Mr. Goodwyn: I take it that Mr. Fink felt that it was proper for him as one of the managing officers of the road to explain fully to the directors and owners of the property why those rates were made less.

Mr. Colston: At that time was the Tennessee Central running through Clarksville?

Mr. Goodwyn: No sir, it was not built, or even projected, as far as I know.

Mr. Colston: So the only competition was on the river?

Mr. Goodwyn: That is all he means.

Mr. Colston: What has been and is now the character of the river competition at Evansville and Louisville, if that competition affects any of the rates covered by this complaint?

Mr. Goodwyn: The river competition at both Evansville and Louisville in years past was naturally very much greater than it is now, so far as the Southern territory is concerned, the time was, and prior to the construction of the Louisville & Nashville Railroad, when the Ohio River and its connecting streams was one of the principal links, and an absolutely necessary link in the chain of service that enabled the Middle West, the Northwest and the West to reach the Southeast at all—there was no other means of getting there. With the construction of railroads of course the importance of the river has decreased as an active competitor for traffic. The condition is one now largely of potential competition, as I have undertaken to ex[illegible]in, in connection with the other situation already referred to. The river is there, and aside from the influence exerted upon freight rates by rail competition, competition with markets and product, the river is there, and its active competition could be revived at any time, within a reasonable period, of course, should there be any marked or great increase in freight rates by rail. There is now a line of boats running daily between Louisville and Cincinnati, a line of boats running between Louisville and Evansville, a line of boats running between Evansville and Cairo; there is a line that operates periodically—perhaps I might better say spasmodically—between Cincinnati and Memphis, there are boats that come from Pittsburg occasionally; there are tow-boats that are constantly on the river when the stage of the water permits; they are
395 largely, however, engaged in the handling of lumber and coal, and such heavy products as steel and iron in its various shapes.

Mr. Colston: What has been, and is now, the nature and character of the rail competition at Nashville and Clarksville, as affecting the rates covered by this complaint?

Mr. Goodwyn: About the first, certainly one of the first railroads constructed in the South, was from Charleston, South Carolina to Augusta, Georgia, which was completed in 1838; the old Georgia Railroad & Banking Company, now the Georgia Railroad, was completed between Augusta and Atlanta, about the same time. Traffic from the North and the East was moving via New York, Philadel-

phia, Baltimore and the important dominating North Atlantic cities, and thence coastwise vessels to Charleston and Savannah. Prior to the construction of the railroad from Charleston to Augusta a large part of the traffic moved by the Savannah River from Savannah to Augusta. With the completion of the Georgia Railroad and of the other connections, the business began to move from the South Atlantic port cities by rail, though the competition on the Savannah River between Savannah and Augusta continued very strong, and is a most important factor to-day, in the adjustment of rates to that immediate territory. Then, in about 1838 there was rail connection from the South Atlantic coast as far as Atlanta; the business from the North and East was moving via the route I have indicated to Atlanta, and thence distributed, or short of Atlanta, distributed very largely to the Southeastern territory. Business moving in the other direction from the Middle West and the West was being handled either to New Orleans, and thence by vessel around Florida and up to these South Atlantic ports, necessitating the various transfers of property, the delay, insurance, the damage that handling of that kind naturally brought about, or it was moving by way of the Cumberland River to Nashville and thence being hauled from Nashville to Chattanooga, and from Chattanooga to Atlanta.

Mr. Thomas: You mean by wagon?

Mr. Goodwyn: Yes, until the completion of the Western & Atlantic Railroad. The Nashville & Chattanooga Railroad was completed between Nashville and Chattanooga in 1854, but it had been partially operated as a local line for a number of years previous to that time, and for a while it participated in the handling of this Western produce, this Western freight merchandise generally, when its rails were completed between Nashville and Bridgeport, Alabama, at which point it connected with the boats operating on the Tennessee River between Bridgeport and Chattanooga. So that upon the completion of the Nashville & Chattanooga Railroad, as it was then called, it formed the first rail connecting link from the West, and handled the great bulk of the traffic that was being moved from and via that territory into the South and Southeast. The Memphis and Charleston Railroad was completed in 1858, and it was built for the particular purpose of diverting this amount of freight from the Nashville route in connection with the Cumberland River to the Mississippi River route as far as Memphis, and thence via the M. & C. Railroad over to Chattanooga, from
396 thence taking the same means of distribution as afforded in the business moving by the Nashville and Chattanooga Road. Meanwhile, the Louisville & Nashville Railroad was in course of construction, being built, I believe, in both directions, both north from Nashville and south from Louisville, and a through line was opened between Louisville and Nashville in 1859. I think the purpose of the construction of the Louisville & Nashville Railroad as such a through line is perfectly apparent. Its natural connection was the Nashville & Chattanooga Railroad; its natural antagonist—enemy from a freight standpoint, was the Memphis

& Charleston Railroad. It was nearer the sources of supply as a railroad than was the Memphis & Charleston, and began to enjoy for its haul between Louisville and Nashville the traffic which had theretofore gone down the Ohio River to the mouth of the Cumberland, near Paducah, and later on, to some extent, via the Ohio River, through Cairo, and the Mississippi River through Memphis, in connection with the Memphis and Charleston Railway, it afforded, as I think will be readily apparent a better and more natural and more convenient line for the handling of this Southeastern tonnage than did the line by way of Memphis; it also afforded a better route for the handling of this traffic than did the line via the Cumberland River to Nashville; but in its endeavor to divert to itself the business which had moved via the Cumberland River, it naturally was compelled to meet what the Cumberland River had done, otherwise it could not divert the business. That was, I think, a self evident fact. Now the Nashville & Northwestern Railroad, which extends from Nashville to Hickman, Kentucky, was completed some time between 1861 and 1865. It was turned back by the United States Government to the State of Tennessee at the close of the war, and in 1868 was turned back by the State to its own officers. It was leased to the Nashville & Chattanooga Railroad in October, 1869, and purchased by the Nashville & Chattanooga Road in 1872. That formed a competitor of the L. & N. Railroad from the Mississippi River at Hickman to Nashville, adding to the rail competition existing at that point. The Tennessee Midland Railroad from Memphis to Lexington, Tennessee, and Paducah, Tennessee & Alabama Railroad, from Lexington, Tennessee, to Paducah was completed some time about the year 1890 and was leased to the N. C. & St. L. Road in 1896. That gave another route to the Ohio River at Paducah; the Tennessee Central was completed some twelve or thirteen years ago, I don't recall just when. That in connection with the Illinois Central road formed another line to the Ohio River, and on its Eastern end to Emery Gap and Harriman formed another route into Nashville from Cincinnati and Louisville, as well as between Nashville and the East. Furthermore it opened up a route from Nashville into the Southeast in competition both with the N. C. & St. L., via Chattanooga and in competition with the lines of the L. & N. Road via Decatur, Birmingham and Montgomery. The Tennessee Central Railroad handles business between Nashville and the entire Southeast. There is, of course, an extremely acute competition between carriers. They have nothing to sell but transportation and their success depends upon their ability to sell it. If they do not, they are in a pretty bad fix; naturally
397 the competition, therefore, is acute. There is a competition between markets of supply and markets of demand, as served by the different carriers which intensifies the natural competition between the carriers themselves. For illustration: Chicago wants to reach Memphis; Kansas City wants to reach Memphis; Louisville, Cincinnati, Atlanta, New Orleans, all want to reach Memphis, and if they have a common product to sell in Memphis, and there is a demand at Memphis for that product, each community and

parties interested in the sale of the product bring that inevitable pressure of public opinion and public force and get up and get to back up the competition between the carriers themselves and to make it greater. There is, in the same way, a competition in the opposite direction: As cotton at Memphis, tobacco at Clarksville; the products at Atlanta and at Chattanooga. The railroads at Memphis,—using that still as an illustration,—the Missouri Pacific Railroad has no interest in the world in cotton going to Savannah, it does not handle any, it does not want to handle any, it wants cotton to move in a different direction. The Missouri Pacific, Rock Island road, want lumber to move to Kansas City and to San Francisco, they don't want it to move to New York or East or Southeast and there is that competition, therefore, between the carriers and between the markets of supply, and the railroads, which necessarily and inevitably grows out of those conditions. Then, it must be understood also, in considering that question as to the nature and character of the relative competition at Nashville and Clarksville, this important factor,—important feature would be more promptly stated: Any railroad can reduce a rate to the extent that its connections will participate with it in that reduction; there cannot be any advance however of a competitive rate by one railroad alone, unless all these varied seriously conflicting interests that I have alluded to can be reconciled, except it be that that one railroad is prepared to get out of the business altogether; otherwise it don't do any good for the L. & N. to advance rates from Nashville to the Ohio River, if the Tennessee Central and Nashville & Chattanooga Railroad still keep the rate there. We would simply get out and they would haul all the business. If it be possible to reconcile the various extremely acute conflicting interests and an advance in the rate is proposed—Well, I mean no disrespect at all but it is known that sometimes the law steps in and prevents that. I undertook to advance the rate from Memphis to New Orleans in November, 1910, the advance was suspended by the Interstate Commerce Commission and has finally been abandoned altogether, nothing done about it at all.

Mr. Thomas: I believe the general advance was resisted by Mr. Brandeis?

Mr. Goodwyn: He had nothing to do with our particular case.

Mr. Thomas: I know, I said the general advance in freight rates was resisted?

Mr. Colston: That had nothing to do with the case Mr. Goodwyn refers to. That was known as Docket No. 20, Investigation and Suspension Docket.

398 Mr. Goodwyn: If a man had a rate that he was prospering and making a lot of money under, he would not want it taken away from him; he would take whatever steps he thought necessary and advisable to accomplish that end.

Mr. Thomas: There couldn't be any disrespect in my remark.

Mr. Goodwyn: I did not want to be considered as committing at all or as criticising the suspension of these particular rates. That is

the occasion of my side remark. I believe that is all I have to say on that.

Mr. Colston: You have given a full explanation of it.

There is just one point that has occurred to me that I would like to have you emphasize and I would like to know if the idea I have in connection with it is true. You have explained the construction of the old Charleston & Hamburg road, which was built from Charleston to Hamburg, opposite Augusta, and bridging the Savannah, and the building of the Georgia Railroad, what is now the Georgia Railroad, from Augusta up to Atlanta and the building of the State Railroad, the Western & Atlantic, etc., giving a route from eastern cities to Nashville. I would like to know if it is not a fact that this local pride that you have mentioned, this competition of market with market and the desire of communities to be served did not result in the building of competing roads with that road, and intensify the situation, is it not a fact that in consequence of the desire of the citizens of Savan[illegible], that a railroad was built from Savannah to Macon and afterwards a road from Macon to Atlanta?

Mr. Goodwyn: Yes sir, now part of the Central of Georgia Railroad.

Mr. Colston: Which competed with the Charleston road?

Mr. Goodwyn: Yes sir.

Mr. Colston. It is also true that a road was built down from Bristol, Tennessee, which handled traffic from the East by the port of Norfolk?

Mr. Goodwyn: Yes sir, the old East Tennessee, Virginia & Georgia, now part of the Southern Railway.

Mr. Colston: The traffic was brought down to Dalton or Chattanooga?

Mr. Goodwyn: Yes sir.

Mr. Colston: And thence could be moved from Nashville to the East?

Mr. Goodwyn: Yes sir, formerly called the Kennesaw Route.

Mr. Colston: And in that way a number of competing routes from the East to Nashville sprang up?

Mr. Goodwyn: Yes sir.

Mr. Colston: What has been and is now the nature and character of the rail competition at Evansville and Louisville as affecting rates covered by this complaint?

Mr. Goodwyn: Well, the rail competition at Evansville and Louisville has become intensified very greatly by the construction of additional railroads into and via both of those points. In answer to a previous question of yours, I gave a list of the railroads serving both Evansville and Louisville and it would require but a
399 very cursory examination of a standard map to show conclusively, I believe, that the character of the competition at both Louisville and Evansville now is greatly in excess of what it was in the old days when those two communities were served by a few, smaller number of railroads. They have been railroad centers of importance for a great many years, far beyond either the

period of my personal knowledge, or any investigation that I have ever made. I think that is a matter of common history.

Mr. Colston: The competition at Bowling Green is solely that of the river, is it not?

Mr. Goodwyn: Yes sir.

Mr. Colston: What has been and is now the nature and character of river competition at Bowling Green, as affecting the rates to and from that point?

Mr. Goodwyn: I don't know just when the L. & N. Railroad was completed between Louisville & Bowling Green, I have not looked it up.

Mr. Colston: 1859, just before it went to Nashville.

Mr. Goodwyn: I think probably about that time. The first United States census that gives any record of Bowling Green at all is in 1870 when the population was placed at 4574. It is my understanding and my information that boats have been running on the Green and Barren Rivers for many years and no doubt the period has been, as stated by the gentlemen, who, have testified before in this case; unquestionably they were operated long prior to the construction of the L. & N. Railroad. The distance by water from Bowling Green to Evansville is 190 miles. It is all slack water navigation to the mouth of the Green River, about 8½ miles above Evansville. There are five locks in the two rivers, four in the Green and on- in the Barren, the Green connecting with the Barren at Woodbury. The capacity of a boat operating in any river having locks must necessarily be limited by the size of the lock—I mean, any through boat. And those operating in the Green and Barren Rivers are smaller than those operated in the Cumberland River. I made some investigation on that particular point and I find that no boat can operate through to Bowling Green whose maximum length exceeds 147 feet. The wheel of the boat is about 20 feet, so that I suppose the hull measurement would be 120 to 125 or -27 feet. There are two boats that are now operated to and from Bowling Green; they are the Bowling Green, 122 feet long, and 123 net tons register, and the steamer Evansville, 120 feet long with 144 tons net register, but both boats can carry something over 20 tons actually. The normal scale of the boat rates between Evansville and Bowling Green,—the boat rates if you please,—the normal scale has never been as low as the normal scale carried by the boats in the Cumberland River to and from Nashville. I, of course, am unable to say what was the occasion of that difference from my own personal knowledge, but from what I know generally about traffic affairs I take it that it was occasioned partly by the volume of tonnage, much greater in the Cumberland than in the Green and Barren rivers, and which in the Cumberland River was, in former
400 years, very much greater than it is now; then by the size of the boats and cost of operation. The United States Government regulations require that a boat of from 100 to 450 tons capacity shall carry the same crew——

Mr. Thomas: May I ask a question for information? Do I understand you to mean that the tonnage of the boats is greater in the

Cumberland than in the Barren, or that the tonnage carried on the river was greater?

Mr. Goodwyn: Both; the only difference then, if my view of it is correct, in the cost of the operation would be probably in the interest on the price of the boat itself, which would be less in the smaller boat than the larger and the cost of fuel. But my information is that a 300 ton boat does not cost twice as much as a 150 ton boat—costs about 25% or 30% more. As to boat rates, there have, of course, been wars on the Green and Barren rivers, just as there have been rate wars on every river in the United States that was ever fretted by the wheel of a steamboat. That seems to be a little diversion, that the steamboat people engage in every once in a while for some reason that I do not altogether understand. Rate wars are unproductive of any good either to the transportation facilities that engage in them, or any material good to the people that avail themselves of the cut rates, during the existence of the wars. There seems to be an idea, though, on some rivers, that there should be an exemplification of the law of the survival of the fittest, or the fellow that has the longest bank roll. Some reference, a good deal of reference in fact, has been made to the steamer Sun that was operated in the interest of the people of Bowling Green for a period of nine months of the year ending in 1901. Of course, I have no knowledge other than that which has been given to me in a general way and in the testimony which I have heard here, about the ownership of the Sun. I take it that the Sun was bought by the people of Bowling Green in the belief that their river rates were not sufficiently low, and for the same purpose that the people of Chattanooga have operated a boat on the River to that point, namely: not so much to have the pleasure of patronizing the boat, as to force down the rail rates and get reduction in that direction. At any rate, when the Sun came into the business, I believe it is a fact that the rates to and from Bowling Green became generally demoralized, utterly demoralized, both on the River and to a very considerable extent, by rail. I heard some testimony in regard to the reduced rates that were made into Bowling Green from Evansville, if I remember, and from Nashville. I was with the L. & N. Railroad, of course, at that time, and I would like to say that I have no personal knowledge whatever of any reductions that were made by the L. & N. Railroad at that time in interstate rates, and while I have not any disposition at all to deny the general facts as testified to by Mr. Greer and Mr. Smith, was it not?—I am inclined to think that there must be some mistake, if it resulted in any change in the interstate rates. The L. & N. did authorize reduced rates between Louisville and Bowling Green; it did not issue them, it simply protected them un-
401 der arrangements that were made through its representatives with the people of Bowling Green. I think, perhaps, that is illustrated by Mr. Duncan in his reference to the conversation and correspondence he had with Mr. Culp, the Mr. Culp he referred to being at the time the General Agent of the L. & N. Railroad; but I question the accuracy of Mr. Duncan's memory, and I question it because Mr. Culp was dead and buried long before 1901.

Mr. Thomas: Mr. Duncan didn't state that was 1901, nor during the Sun's operation. The record don't show that.

Mr. Goodwyn: I misunderstood him. Mr. Culp died, if I remember correctly, about 1895.

Mr. Thomas: That was during Mr. Duncan's first period in the grocery business, while Mr. Culp was alive.

Mr. Goodwyn: Oh yes, he didn't fix it after his death?

Mr. Thomas: No sir.

Mr. Goodwyn: To my knowledge, the L. & N. Railroad made no reductions whatever in any interstate rate, though it did make contract, subject to revocation, I notice, as to freight rates between Bowling Green and Louisville. When the Sun went out of business in 1901, it is my understanding that an agreement was made between the Evansville and Bowling Green Packet Company on the one hand, and Mr. Wilkerson, representing the Packet Company, and the citizens of Bowling Green, or at least those interested in the Steamer Sun, on the other hand, represented by Mr. Greer, under the terms of which the Packet Company obligated itself to maintain for a period of five years the rates between Evansville and Bowling Green, which were approximately, and very largely, I understand, the same as those rates which had been voluntarily established by the Steamer Sun when she began operating in the River in competition with the Evansville & Bowling Green Packet Company, and which rates were lower than the boat rates previously carried by the Evansville & Bowling Green Packet Company. The contract, or agreement, or whatever it may have been called, would have expired in the year 1906, but the rates as of 1901 by boat are almost identical, to-day, in 1911, with those which were covered by the contract. The Evansville & Bowling Green Packet Company, I might add, publishes rates not only between Evansville and Bowling Green, but between Evansville and the way landings; and I have heard no complaint from the people of Bowling Green of the fact that the rates from Evansville to the way landings this side of Bowling Green are very materially less than to Bowling Green. very materially higher, I should say—very materially higher: the long-and-short-haul principle seems to worry in one direction and not in another.

Mr. Thomas: It seems that we have enough to do to look after our own side.

Mr. Colston: Mr. Goodwyn, has the Louisville and Nashville Railroad Company any financial interest in the Evansville & Bowling Green Packet Company?

Mr. Goodwyn: So far as I know, absolutely none whatever, and if it did have, I believe I would know, from the very nature
402 and character of my connection with the railroad, and the official duties that I have to perform. I have seen the company's Annual Report for a good many years, to its stockholders, and I have never yet seen an item showing a dollar's interest in the Evansville & Bowling Green Packet Company reported amongst its other investments.

Mr. Colston: Mr. Goodwyn, in paragraph 18 of the complaint in

this cause, it is alleged that the circumstances and conditions surrounding the transportation of traffic to and from the station Bowling Green, Kentucky are substantially similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky, and complaint is also made of the rates to and from Bowling Green as related to the rates to and from Evansville, Indiana. Please say whether or not it is a fact that the circumstances and conditions which surround the transportation of traffic to and from Bowling Green are substantially similar to the circumstances and conditions which surround the transportation of traffic to and from Clarksville, Nashville, Louisville and Evansville?

Mr. Goodwyn: I have undertaken to explain the circmstances and conditions surrounding the transportation of traffic to and from these different points, testifying to them, under oath, as I see the situation, and as I believe it actually exists—as I know it exists, and certainly it can not correctly be said that the circumstances and conditions surrounding the transportation of traffic to and from Bowling Green, Kentucky, are the same or substantially the same as the circumstances and conditions surrounding the transportation of traffic to and from Nashville, Clarksville, Evansville and Louisville.

Mr. Colston: Please state the relative commercial importance of the cities of Bowling Green, Kentucky and Nashville, Tennessee, and also state whether the difference in the commercial importance of the two cities is due to any arbitrary adjustment of rates by the Louisville & Nashville Railroad Company, or any other carriers defendants in this proceeding, or whether it is due to geographical and other natural advantages, independent of any action which may have been taken or may be hereafter taken by the railroads?

Mr. Goodwyn: Well, I think, perhaps, I can best answer that question by going back some years to a starting point. As I said awhile back, the United States Census of 1850 place- the population of Nashville, Tennessee at 10,165; it made no mention at all of Bowling Green, Kentucky. The Census of 1860 placed the population of Nashville at 16,988; making no mention of Bowling Green, Kentucky. The Census of 1870 placed the population of Nashville at 25,865, and for the first time gave the population of Bowling Green, at 4,574. In the next decade the population of Nashville had grown to 43,350, that of Bowling Green to 5114—an increase, at Nashville, of approximately 18,000, an increase at Bowling Green, of something less than 600. The Census of 1890 place- the population of Nashville at 76,168, an increase of approximately 33,000; it placed the population of Bowling Green at 7803, an increase
403 of about 2700. The Census of 1900 gave the population of Nashville 84,703, an increase of nearly 8,600; it gave the population of Bowling Green at 8428, an increase of 625. The Census of 1910 gave the population of Nashville at 110,364; the population of Bowling Green at 9173; Nashville increasing nearly 26,000, Bowling Green increasing a little over 700. For the entire period from 1870 to 1910, the population of Bowling Green practically doubled; the population of Nashville more than quadrupled. From

that standpoint, then, the importance of Nashville can readily be recognized. From the standpoint of its traffic, beginning July 1st, 1904, when our fiscal years start, and ending with June 30, 1911, when our fiscal years end, for that period of seven years, there was received at Bowling Green, Kentucky, by the rails of the Louisville & Nashville Railroad, 829,255,199 pounds of freight, on which the L. & N.'s revenue was $919,180.78. In the same period there was handled into Nashville by the L. & N. Railroad 8,211,098,002 pounds of freight, on which the L. & N.'s revenue was $7,444,865.89, the tonnage going into Nashville by our line being ten times as great, and the revenue about eight times as great, though in the last Census, Nashville, from a standpoint of population—I have already reported that. During this same seven years, the business forwarded from Bowling Green, Kentucky aggregated 442,364,900 pounds, on which the L. & N.'s revenue was $575,105,66; the business forwarded from Nashville aggregated 7,531,101,500 pounds, on which the L. & N.'s revenue aggregated $5,848,016.97. I want to stop here just long enough to call attention to the figures I have given as to the freight received at Bowling Green, and the revenue derived therefrom, to say that if you divide the revenue by the tonnage, it shows the average rate earned by the L. & N. Railroad on all business it handled into Bowling Green, whether that came from New Orleans, from Louisville, from Cincinnati, from St. Louis, or anywhere; and that average revenue earned by the L. & N. Railroad on its Bowling Green traffic of all kinds was 11.1.

Mr. Thomas: Inbound?

Mr. Goodwyn: Yes, inbound, was 11.1 per hundred pounds. That is the excessive, exorbitant and arbitrary average rate that we earned, and on the outbound business the average rate earned by the railroad was 12.77 per hundred pounds. The commercial importance of Nashville is not due to the influence of the railroads, in my judgment. I will venture the assertion that before there was a railroad either at Nashville or at Bowling Green, that the relative commercial importance of the two cities showed as great a balance in favor of Nashville as it does to-day. I don't know that, but from my knowledge of the business that was handled at Nashville, from the reports that have been made of its geographic position, of the operations of the Cumberland River boats, and the handling of through traffic, of the concentration at Nashville of cotton grown in the South, and its movement therefrom, I have no doubt that what I said is true. My own father, who was a cotton merchant at New Orleans, went
404 to Nashville to buy cotton, before I was born.

Mr. Colston: Please state the relative commercial importance of the city of Clarksville, Tennessee, as compared with that of Bowling Green, and state whether the difference is due to any arbitrary adjustment of rates by the Louisville & Nashville Railroad Company, or due to geographic or other natural advantages, independent of any action that has been taken or may hereafter be taken by the railroads?

Mr. Goodwyn: I have already given the population of Bowling Green, as shown by the United States Census report-. These reports

do not name Clarksville, Tennessee prior to the 1870 report, the same that Bowling Green was first mentioned. Clarksville is then shown as having a population of 3200. In 1880, 3,880; in 1890; 7,924; in 1900, 10,377; and in 1910—perhaps this will gladden the hearts of the Bowling Green people—8,548, a loss of less than 2,000.

Mr. Thomas: It don't gladden our hearts like it breaks the hearts of Clarksville.

Mr. Goodwyn: I have already given, also, Mr. Colston, the amount of tonnage hauled and revenue earned by the L. & N. Railroad into and out of Bowling Green, for the period of seven years. I will give it for the same period in and out of Clarksville: Into Clarksville, for this seven years, 2,794,846,397 pounds; revenue: $1,788,250.76. You will remember that the tonnage at Bowling Green was 829 million, revenue, 919 thousand dollars. Business hauled out of Clarksville, 1,190,307,800, and the revenue derived thereon $1,542,862.94. You will remember that the tonnage hauled out of Bowling Green was 442 million, and the revenue was 575 thousand dollars.

Mr. Thomas: What seven years is that?

Mr. Goodwyn: The same seven years, ending June 30, 1911. The commercial importance of the city of Clarksville is not due to any arbitrary adjustment of rates by the Louisville & Nashville Railroad. The Louisville and Nashville Railroad has made no arbitrary adjustment of rates for Clarksville, so far as its traffic officers have had any knowledge of the situation or any building gauge to apply; they have met at Clarksville what they found there; they have created no conditions. Certainly, the Louisville & Nashville Railroad can hardly be considered responsible in any sense at all for the Clarksville tobacco market, which, I believe, is the largest dark tobacco market in the world.

Mr. Colston: Mr. Goodwyn, I will ask you to make a similar comparison between Bowling Green and Louisville.

Mr. Goodwyn: Well, I cannot give you, Mr. Colston, the tonnage or the revenue of our line into and out of Louisville for those periods; neither did I work up the Census Report, but commercially speaking, and from the standpoint of a revenue producer for the L. & N. Railroad, Louisville undoubtedly ranks among the first half dozen places on the line; there is no question about that. So far as its population is concerned, it ranks fourth, being exceeded in that respect by St. Louis, by Cincinnati and by New Orleans, of all the cities reached by the L. & N. Railroad. We regard it as
405 our own home town, the officers consider it, and we know from every day experience its commercial importance; we know positively that the importance of the place does not grow out of any unreasonable, arbitrary, unreasonable and unnecessary adjustment of freight rates, either on the part of the L. & N. Railroad, or, as far as I am able to judge, on the part of any other railroad serving Louisville; and what I have said of Louisville is approximately correct as to Evansville, likewise, which is also covered by this complaint, though of course commercially not as important as Louisville, nor is it commercially as important as Nashville, to us.

Mr. Colston: Mr. Goodwyn, please explain how rates are made

from Ohio River points, such as Louisville, Kentucky, to Nashville, Tennessee?

Mr. Goodwyn: When the L. & N. Railroad first built its line from Louisville to Nashville, the first system of rates it established were made on mileage scale, and beginning with the 70 cent rate first class, it was found by actual experience that the rate was not what it should be to meet the conditions which existed at Nashville. The L. & N. Railroad's purpose constructing its railroad to Nashville could not be served by that rate, and could not haul business there in competition with the boats, and I have already mentioned, in another part of my testimony, the application that was made by the Superintendent of the railroad to the Board of Directors for authority to reduce the rate to such a figure as would enable the line to meet the situation. The reductions were made. The competition in the River has been followed, from time to time, and there is now, as the outgrowth of what might be said to be a formative period, an adjustment of rates into Nashville under which we carry to that point the same rates from Louisville, Owensboro, Evansville, and Henderson, while the Nashville & Chattanooga Railroad, in connection with both the Mobile & Ohio and the Illinois Central, carry the same rate from Cairo. It is not meant by me to say that there is now any actual competition of importance from Louisville to Nashville by water. But the rate from Louisville is made the same as the rate from Evansville, by reason of the market competition, place with place, to which I have referred. We believe it to be our duty to keep the various points on our line in fair relative adjustment of rates, the one with the other in a case of that sort, and for that reason this basis of rates prevails to-day. The rates from Cincinnati to Nashville are made higher than from Louisville, and the rates from St. Louis are made higher than from Cairo and Evansville. The St. Louis differences from Cairo and Evansville were properly very largely controlled by the Illinois Railroad and Warehouse Commissioners' scale of rates from East St. Louis, in Illinois, to Cairo, in Illinois, but what we in railroad parlance call assimilated to the Southern classification, so that through tariffs might be published, the classification of the Illinois Railroad and Warehouse Commission being materially different from that of the Southern classification, and consequently those differences were assimilated and fairly represent what the rates would be on
406 the more important articles in the different classes, of Southern classification. As explained by Mr. Fulton, last night, this difference in St. Louis over the Ohio River was changed in 1905, by the reduction of beginning with 5 cents a hundred pounds, first class, for the reasons as named by him. There is another feature that has influenced the rates from St. Louis. The rates from St. Louis to the Southeastern territory are made fixed differentials, as we call them, over the Ohio River, Over Cairo and Evansville, and those differentials or differences are the same to Nashville as they are to Americus, Georgia; they are the same to Montgomery, Alabama as they are to Charleston, South Carolina, and they are governed to some extent, and on certain commodities governed alto-

gether, by the rate which applies from St. Louis to Memphis, those rates, in turn, being made in competition with the Mississippi River boats. Now as to the rates themselves, from the Ohio River to Nashville, I just want to say a few words about that. There is not any railroad in the United States or anywhere else, that is worth the name of a railroad, that is properly conducted, that makes its rates any less than it has to make them. It is not in business for a purpose of that sort, any more than any business man in this room sells his goods any cheaper than he has got to sell them. The railroad is compelled by law to apply reasonable rates, that are just and reasonable, in and of themselves; that is to say, a reasonable rate, in and of itself, is one that does not impose an undue burden upon the traffic, that does not prevent the freedom of its movement, that does not yield to the carrier itself an excessive and arbitrary return upon the value or the cost of the service that is performed, and no railroad wants to make its rates so uselessiy and needlessly low as to sacrifice its own revenue. I say, without any hesitation whatever, that if the Louisville & Nashville Railroad could to-day advance its rates from the Ohio River and from St. Louis to Nashville and Clarksville, Tennessee, and meet the conditions that exist at those points and be permitted by the powers above us to make such an advance, it would do it, just as soon as it could get the tariffs out.

Mr. Colston: Please explain how the rates are made from Ohio River points, such as Louisville, Kentucky, to Clarksville, Tennessee.

Mr. Goodwyn: The Nashville adjustment has controlled right straight along, the Clarksville rates, from the Ohio River. By reference to our tariff now in effect you will find that we carry two lines of rates from the Ohio River to Clarksville, one for depot or team track delivery, the other for store door delivery, the store door delivery being a relic and a continuation of the conditions which existed when boats were more numerous and handled a larger part of the business into Clarksville, the store door being made, as now, locally two cents a hundred pounds uniformly, higher than the depot or team track or warehouse delivery rates. By warehouse delivery I mean warehouses located within our terminals in Clarksville.

Mr. Colston: The store door involves draying?

407 Mr. Goodwyn: Yes sir, up town. In connection with the draying, I think, Mr. Examiner, the proper thing to say is that we pay no Clarksville consignee for hauling his own freight; we have a contract for that draying, and pay none of the drayage to the owners of the property.

Mr. Colston: The rates to Clarksville are, in your opinion, forced by the competitive conditions at that point, are they not?

Mr. Goodwyn: Undoubtedly.

Mr. Colston: Please explain how the rates are made from Ohio River points, such as Louisville, Kentucky, to Bowling Green?

Mr. Goodwyn: We carry from Louisville to Bowling Green, at the present time, and have for a number of years, a line of class rates, which are governed, properly speaking by what were formerly called L. & N. local classification, and which rates are now governed

by the Southern classification, and with Note 28 exception, Note 28, Mr. Examiner, being list of exceptions showing wherein our local classifications differed from the Southern; and there is this additional difference between our local classification and the Southern classification: the Southern classification provides, as you know, for six numbered classes, and for seven lettered classes, numbered 1 to 6, lettered, a, b, c, d, e, h, and f. Our local classification carries four additional classes, being i, l, m, and n. In the use of the Southern classification generally many of the heavier commodities are rated abnormally high. The Southern classification was originally designed for six classes only, and the lettered classes were designed, really, as commodity rates; class A, in the first place covered nothing but bagging and ties; Class B covered nothing but packing-house products, class C covered nothing but flour in sacks, class D covered nothing but grain, and corn meal in barrels; Class E covered only ale and beer, Class H covered only whisky and wine, class F covered only flour in barrels. They were not sufficient for us locally, and these additional classes were added, in which we carry such articles as brick, lumber, machinery, agricultural implements, iron, sand, gravel, etc., subject, of course, to the mileage scales of rates that we use on them. We have no such classes as I, L, M, and N to other than our local stations, or to such junction points as with other lines who are similarly situated with ourselves, and there is practically the same classification with them locally as with the L. & N. Railroad. I would like to file, as an exhibit, a statement of those class rates, and compared with what the rates would be if they were made upon our actual mileage scale for 114 miles. Said statement is marked Exhibit No. 2. Those rates have been supplemented by a very extensive line of commodity rates, and I will file a statement of those commodity rates as Exhibit No. 3, to my testimony. This exhibit shows, in the first column, the rates that are today in effect upon those various commodities from Louisville to Bowling Green. It shows, in the second column, what the rates would be, if the class rates were applied as shown in the exhibit just previously filed; it shows, in the third column, what the rates would be if our mileage scale of class rates were applied. I would like to just call
408 attention to some few of them. We are carrying, for example, on apples and pears, a rate of 32 cents per barrel, any quantity. If our straight classification were applied, the rate on car loads would be 30 cents per hundred pounds, equivalent to about 45 cents a barrel, less than car load, 47 cents per 100 pounds, equivalent to about 70 cents per barrel. We are carrying on bacon hams, salt meat in sacks, or wood, less than carloads, 25, which if we applied our class rate would be 30, if we applied our mileage scale would be 32; we are applying on beans and peas, barrels, boxes, sacks, any quantity, 27 if we applied our class rate as to different character of packages, as provided by the different classification of rates, would run, from a minimum of 32 to a maximum of 50. Take buggies: we carry a rate of 55, which, if we applied our class rate, for a buggy not exceeding 54 inches in height, the rate would be $1.10 per hundred, exceeding 34 but not over 54, it would be

82½; not exceeding 34 inches in height, it would be 55. In other words, a buggy, irrespective of its size, we would apply the lowest rate that we would apply in the grading. Our rate on canned goods, in car loads, is 18½ per hundred, when it would be 32, 42, etc. Now it is proper that I should explain how these commodity rates were made. We have taken the rates of the Evansville & Bowling Green Packet Company, from Evansville to Bowling Green, and after classifying those rates, those commodity rates, because, they are all commodity rates, with the exception, I think, of a 20 cent rate on merchandise not otherwise specified, after classifying those various commodities carrying Southern classification, with Note 28 Exception, we have added the following differences to represent what we believe to be a fair difference *fo* for the rail service as compared to the river, and to cover partly the cost of the insurance by river: first class, 10c, 2nd, 9c., third, 8c., 4th, 7c., 5th, 6c., 6th, 5c.; the other classes, 5 cents a hundred pounds, when adding those differences from Evansville to the water rates from there, makes our Evansville-Bowling Green rate. We then, in order to afford the other shipping points an opportunity to pay for Bowling Green business, make the Evansville rate apply also to Hendersonville, Kentucky, from Owenboro, Kentucky, and from Louisville, Kentucky. In making our rate to Bowling Green, from Cincinnati, on those same commodities, we first find out what the class rate would be from Cincinnati to Bowling Green, and then what the rate is from Louisville, and what it would be if the class rate had been applied from the actual rate, and compared with the class rate, we ascertain the percentage of reduction, and apply the same percentage of reduction to make the Cincinnati rate, and we follow the same procedure, in fixing our rate from St. Louis to Bowling Green, and in fixing our rate from Nashville.

Mr. Thomas: You mean on commodities?

Mr. Goodwyn: I mean on commodities to Bowling Green. We have, going out of Bowling Green, a number of commodities that were made specially for, as we saw it and believed, the needs of the city, but I don't suppose it is necessary for me to read that lengthy explanation into the record; I am just giving a general idea. Now I just want to say one word——

409 Mr. Thomas: Have you a list of those commodities outgoing?

Mr. Goodwyn: They are in our tariffs. I just want to say that from the best information I have been able to obtain of all the business that is brought into Bowling Green, Kentucky, the Louisville & Nashville Railroad handles approximately 80 per cent., the boats about 20 per cent; of all the business going out of Bowling Green we handle approximately 95 per cent., the boats about 5 per cent. I think that statement can be taken, certainly it is to my mind, as conclusive evidence that the Louisville and Nashville Railroad has amply met the river competition at Bowling Green.

Mr. Colston: I believe, Mr. Goodwyn, you have explained this fact in your detailed statement, but in order that it may appear in as concise form as possible, I will ask you if it is not true, and if

it does not appear from the statement which you have just made and the exhibits you have filed, that in the first place your class rates to Bowling Green, Kentucky are lower than they would be if established in accordance with your standard scale which applies between local stations generally on your line?

Mr. Goodwyn: Yes sir, that is true.

Mr. Colston: And it is true further that you have further reduced the rates below those rates thus provided for Bowling Green, by the issue of numerous commodity rates?

Mr. Goodwyn: Yes sir.

Mr. Colston: These differences between the commodity rates and the local class rates for Bowling Green, Kentucky, are indicated in Exhibit No. 3, which you have filed?

Mr. Goodwyn: Yes sir, as indicating the importance of the commodity rates, I might add to what I have said, that practically two-thirds of our revenue on freight brought into Bowling Green is derived from the handling of these commodities covered by those special rates, and one-third on the class rates.

Mr. Colston: And I presume the proportion of tonnage handled under commodity rates is even greater?

Mr. Goodwyn: Yes sir, because necessarily as the rates are lower, the proportion of tonnage would be considerably greater. I can give it to you for the month of October, if you want it.

Mr. Colston: I would like for you to give me the tonnage and revenue handled on commodity rates, and the tonnage and revenue handled on freight rates from Louisville proper to Bowling Green proper, for the month of October, 1911?

Mr. Goodwyn: We handled on commodities 887,615 pounds, on which our revenue was $1313.14; we handled on class rates, 198,642 pounds, on which our revenue was $701.80; that was for the month of October, 1911.

Mr. Thomas: What do you mean by the term revenue?

Mr. Goodwyn: What we earn.

Mr. Thomas: Do you mean net?

Mr. Goodwyn: No sir, I mean gross.

Mr. Thomas: You took in——

410 Mr. Goodwyn: No sir, I mean that is the L. & N. part of it I had our revenue, I didn't mean the total.

Mr. Thomas: That runs through there, and I thought awhile ago you meant that.

Mr. Colston: That has a very definite meaning, and the Commission have prescribed what shall be termed freight revenue.

Mr. Thomas: That is only the L. & N.'s part?

Mr. Goodwyn: Yes sir, that is only the L. & N.'s part.

Mr. Colston: Can you state approximately what the revenue would have been on those commodities, which were handled during that month, if they had been handled at the class rates which apply to Bowling Green?

Mr. Goodwyn: It would have been $1995.00.

Mr. Colston: And it would have been even greater if the regular distance scale class rates had been applied?

Mr. Goodwyn: Yes sir.

Mr. Colston: And that regular distance scale is the one in accordance with which you usually make rates on the local stations along the line of your road, is it not?

Mr. Goodwyn: Yes sir.

Mr. Colston: Mr. Goodwyn, please explain how the rates are made from Chicago, Illinois, to Nashville and Clarksville, Tennessee, on the one hand, and to Bowling Green Kentucky, on the other, and also explain specifically the differences of circumstances and conditions which surround the transportation of traffic to those destinations and which affect the relation of class rates from Chicago, which are mentioned in paragraphs 5 and 7 of the complaint in this case?

Mr. Goodwyn: Well, the rates from Chicago to the Ohio River on business going to Nashville, Clarksville or to Bowling Green, are made by the Northern roads. We do not make them; we haven't anything in the world to do with the making of them. Prior to 1905, the rate from Chicago to the Ohio River on business for Bowling Green and the rates from Chicago to the North bank of the Ohio River on business for Nashville and Clarksville, were precisely the same, with the exception that to Nashville and Clarksville the rates were governed by the Southern classification, while to Bowling Green they were governed by the official classification. The rate from Chicago to the north bank of the Ohio River crossing on the 40 cent scale, governed by the official classification, are made less than the normal rate of the Northern lines for the distance from Chicago to the north bank. The only difference then prior to 1905 was the difference of the classification, at that time, as testified to by Mr. Fulton last night, rather, the Northern lines believing that it was to their interest, and the proper thing to do, to reduce their proportional rate or divisions of through rates on business going to the Southeast, for the purpose of more nearly making the total rates to the Southeastern territory in line with the rates from the East. There had been a great deal of agitation and complaint about the situation, complaint that there was an unfair adjustment from the East as compared
411 with the West, improper adjustment of the freight rates, and it was met by this reduction, that in the differentials or rates applicable to that particular territory, at least the greater part of it, if not all—I won't be sure about that being, as a territory to which the rates from the East are not made on combination, they are made, most of them, primarily by the water routes to the South Atlantic ports, and it was to meet that situation, as I understand, the lines from Chicago reduced their differential. However, the rates to points in Kentucky from the East, and certainly to points in Kentucky—this portion of the State—are made from the East on the Ohio River combination, or on the lowest combination, and consequently I have no doubt that the Chicago lines saw no occasion for reducing their proportion to that particular territory, as the rates from Chicago to the north bank of the Ohio River were already considerably less than the rates from the East to the same crossings. I do not want it to be understood that I am speaking as to universal

conditions in the State of Kentucky. There are points on the line of the Chesapeake & Ohio Railroad where that situation does not exist, but they are so near to Cincinnati that the combination from Chicago through Cincinnati to that territory is, generally speaking, materially under the actual rates carried by the Chesapeake & Ohio Railroad, they are its own rates; I have no doubt that is the reason why this 35 cent scale was not made applicable by the northern roads to the Kentucky territory. From my own knowledge of the rate adjustment in the north, I am prepared to supplement what Mr. Fulton said regarding the entire relation of their rates. They are to an extreme, unusual, and in my judgment, unnecessary extent, related one to the other, so interwoven, the one with another that it is difficult, if not impossible to change any rate of importance without changing hundreds of thousands of other rates. I will illustrate that by saying that in the lake navigation points from Chicago and the East, it formerly was the custom to reduce the rate on grain and corn products, the Central Freight Association and the Trunk Lines having a list of the commodities which they put under what they call the grain and commodities list. The list originally of course began with flour and meal. It has been extended until now it takes in cotton-seed meal, it takes in linseed meal, and a number of other articles as to which primarily they regarded the rate, that it should be properly the same as on flour and corn meal. Well, when the lake navigation was opened, the immense tonnage of flour and corn meal that was available for lake boat transportation, they deemed it necessary to make a reduction from Chicago to New York, Boston, Philadelphia and Baltimore, and that was made on corn products. The result of it was a reduction in the rate on cotton seed meal from St. Louis, From Evansville, Cairo and Louisville to Memphis, and because of that reduction, a reduction from the entire Southern cotton producing territory, because of the Lake navigation from Chicago to Buffalo. I do not see how this could change their adjustment to Kentucky territory and confine it to Chicago or to points in the Chicago & Ohio River Committee's territory;

412 it would inevitably extend East of the boundaries of that Committee. I do not believe, as a matter of competition, that the lines serving Cleveland, Ohio would depart from the adjustment of rates that they have maintained for a great many years until they made the rate from Cleveland to Cincinnati the same as from Chicago to Cincinnati; if Chicago to Cincinnati were reduced for Kentucky, Cleveland would be reduced; if Cleveland were reduced, Detroit, Toledo, Sandusky, Buffalo, and Pittsburgh the whole territory would come down. Of course that does not affect us, that situation does not affect us, south of the River, any more than the total rate is affected by any change they might make in their part of it.

Mr. Fulton: Mr. Goodwyn, wouldn't that also affect the territory North of the Ohio River in the reverse direction, ultimately?

Mr. Goodwyn: I don't think there is any doubt of that.

Mr. Fulton: It would then mean that there would be no benefit

in reducing the rates from Chicago to Louisville applicable on Bowling Green or interior Kentucky points?

Mr. Goodwyn: No sir, because whatever reduction was made would be made to other points as well as to Bowling Green, to which Bowling Green wants to job.

Mr. Colston: Do the same explanations which you have given as to rates from Chicago apply to Indianapolis and other northern points mentioned in paragraphs 3 and 4 of the complaint in this cause?

Mr. Goodwyn: Well, not to St. Louis; it does not refer to St. Louis.

Mr. Colston: I had reference particularly to Indianapolis and other northern points in the same territory as Indianapolis, South Bend, and Chicago?

Mr. Goodwyn: Yes sir, because I have already explained that our commodity rates, St. Louis to Bowling Green, the difference of St. Louis over Evansville is very materially less than from Cincinnati over Evansville to Nashville.

Mr. Colston: Now please explain how the differences in circumstances and conditions which surround the transportation of traffic to Bowling Green on one hand and to Nashville and Clarksville, Tennessee, on the other, affect the rates from New York to those points, and cover particularly, please, the rates mentioned in paragraphs 6 and 7 of the petition with reference to traffic moving from New York?

Mr. Goodwyn: When the Louisville & Nashville Railroad opened its line to Nashville, or shortly thereafter, it undertook to compete for the business from the East. The Trunk Line adjustment already prevailing from Eastern territory to the then Ohio River crossings, including Evansville and the boats were in operation on the Cumberland river. The L. & N. Railroad then endeavored to make an arrangement by which it would equalize through Louisville and through Cincinnati the rates which were available from Eastern territory, New York, as illustrating the point, via Bowling Green and the River; it adopted a number of expedients in the
413 effort to accomplish that result. For a part of the time it carried proportional rates from Louisville, which added to the existing rate from the East to Louisville, made up the rates which were available via Evansville and the boat line. It later established through class rates, governed by the official classification. The proportional rates which it carried were at one time so low as ten cents per hundred pounds, first class from Louisville through to Nashville, was 16 cents for quite a period, 25 cents per hundred pounds. After the through rates were published from the East, and I do not find in reference to our old rate records, anything showing through rates from the East to Nashville prior to 1882, but after the through rates were first issued, when the th-ough rates were first issued they were made, first class 1.09, second class, 89 cents, third class, 69, fourth class, 54. At that time what is now official classification was then called trunk line classification, and had but four classes in it. Those rates varied throughout the succeeding years, and during one period, in 1885, went as low as 56 cents per hundred pounds, first

class, from New York to Nashville. I am not able to give, from the examination I made, what particular reason influenced that low rate—some competition of some kind, I have no doubt—they even went lower than 56, it went to 40, first class, from New York to Nashville; in 1885, the low rate first class of 40 was advanced to 97, and that scale of rates prevailed, with but a slight interruption in 1886, until the year 1887, when a scale of rates was put in, 91 cents, 78, 60, 42, 36, 31. That scale of rates continued uninterruptedly from 1887 until the present time. What was originally undertaken to meet the competition in the Cumberland River and the combination available by Evansville was in later years continued, by reason of the competition from the South Atlantic coast ports and coastwise steamers. I am unable to give you the distance in nautical miles from New York to Charleston and Savannah, but in the division of rates from the East by water to Southern and Southeastern territory and to Nashville, the coastwise steamer lines pro-rating on 250 miles from New York to Charleston and Savannah, and 250 miles for water transportation is generally conceded to be a fair relation to rail mileage. I believe it is either three or four to one.

Examiner Boyle: Three to one.

Mr. Goodwyn: Three to one, yes sir. So that upon that basis the distance, New York to Savannah, 250 miles, accepted by the coastwise ocean lines in pro-rating the 549 miles from Savannah to Nashville, makes the rail and water distance from New York to Nashville 799 miles. The short line distance from New York to Louisville is 867 miles, and the distance from Louisville to Bowling Green is 114 miles, so that would be a total mileage of 981 from New York to Bowling Green, as compared with what is considered to be a proper mileage of 799 miles from New York to Nashville, by way of water. We could not of ourselves advance the rates from the East to Nashville, for the reasons I have already stated. Now, as to Clarksville. The L. & N. Railroad, in 1886, issued rates from the East—I would not say issued rates, or either established them,
414 itself—but joined the lines North of the Ohio River in issuing rates from the East to Nashville, on a basis of 12 cents a hundred pounds on the first three classes, and ten cents per hundred pounds on the two lower classes, higher than the existing rates to Nashville.

Mr. Colston: You mean to Clarksville, do you not?

Mr. Goodwyn: Yes sir.

Mr. Colston: You said they joined in issuing rates to Nashville?

Mr. Goodwyn: I meant to Clarksville.

Mr. Colston: Higher than the rates to Nashville?

Mr. Goodwyn: Higher than the rates to Nashville. That basis having been recommended to the Company by its general agent at Clarksville, at that time, Capt. Frank Gracey, as the result of a conference he had had with the merchants of Clarksville, and they accepted it. Through an oversight, the understanding which provided for store door delivery covered by those rates was not carried out, and it was not protested against by the Clarksville merchants for a

number of years. Finally, it was dug up, and I myself put the rate to Clarksville, making store door delivery on the basis of the differential.

Mr. Thomas: From what point?

Mr. Goodwyn: From the East. I have not undertaken to explain the elaborate Eastern trunk line adjustment, the rate from New York, taken as a pivotal point, of course those from Boston, and certain points are higher than New York, those from Philadelphia, certain difference, better, and those from Baltimore still less; interior New York points, like Syracuse, Rochester, Utica, and Binghamton, are grouped with and relate to the New York rates; one of those so-called basing points carries with it territory adjacent thereto taking the same rate. For example, we say "Boston point," "New York point," "Philadelphia point," "Baltimore point," "Syracuse point," "Rochester point," etc., and that trunk line adjustment accounts for the variation in the rates from the interior East to all points where the adjustment prevails, and Nashville is one of them, and so is Clarksville.

Mr. Colston: That explanation you have given, then, applies to Boston, Philadelphia, and the other Northern or Northeastern cities mentioned in paragraphs 3 and 4 of the complaint?

Mr. Goodwyn: That is what is commonly called trunk line territory, that is, east of the Buffalo and Pittsburg line.

Mr. Colston: Please explain how the differences in circumstances and conditions which surround the transportation of traffic to Bowling Green, Kentucky, and to Nashville, Tennessee, and Clarksville, Tennessee, affect the rates from St. Louis, Missouri, to those points, and please cover specifically the comparisons in that regard which are made in paragraph VIII of the complaint in this cause.

Mr. Goodwyn: I have already explained, I believe, the St. Louis rate, to both Clarksville, Bowling Green and Nashville. The commodity rate, which carries the bulk of the business, at least two-thirds of the business into Bowling Green, are made from St. Louis, on differences higher than Evansville, which are less than the
415 differences St. Louis to Evansville applicable to Clarksville and to Nashville, and for the reasons that I have stated, that we use the same percentage of reduction that we use in establishing the commodity rates from Louisville. The rates from St. Louis to Bowling Green, as shown in Section 8, paragraph VIII, of the complaint are confined to the class rates, to say nothing of the commodity ra-es, and those to Nashville and Clarksville are made up by adding the same differences or differentials to the Evansville rate as applied in making the rates to any other southeastern point. Those to Bowling Green are made by following the adjustment of rates that the Louisville & Nashville Railroad makes at all of its local stations.

Mr. Colston: In paragraph IX of the complaint comparisons are made of a large number of commodities from different points of origin to Bowling Green and to Nashville and to Clarksville, Tennessee. Please explain how the differences in circumstances and conditions surrounding the transportation of traffic to Bowling Green on the one hand, to Nashville and Clarksville on the other, affect the rates

on those specific commodities from the points of origin mentioned in the complaint?

Mr. Goodwyn: Well, from every point of origin, and on every commodity mentioned in Section 9 of the complaint, to Bowling Green, the rates are made on the lowest combination, whatever that combination may be, whether it be on the Ohio River or any other point. Except as to buggies, from Cincinnati, cabbage, from Evansville, glassware from Cincinnati, white lead, from Cincinnati and St. Louis, wall paper and wrapping paper, from Cincinnati and St. Louis, cast-iron and soil pipe, from Cincinnati, lead pipe, from Cincinnati, wrought iron pipe from Cincinnati, plows from Evansville, seeds from Evansville, syrup from Nashville, tobacco from Cincinnati and Evansville, tin-ware from Cincinnati, tin-ware and woodenware from Cincinnati and St. Louis: as applied to those points the rates to Bowling Green were made upon the basis which I have previously explained as to the adjustment from Louisville and from the other points reached by the rails of the Louisville and Nashville Railroad. In all of the other cases to Bowling Green the rates are made upon the lowest combination. Precisely the same thing is true both as to the points beyond the line of the L. & N. Railroad and points on the line of the L. & N. Railroad, as to the rates to Clarksville and Nashville, except the cove oysters from Columbia to Nashville, and Clarksville, coffee, from New York, wall paper, from Worcester, Mass., canned sardines, from Eastport, Me., and bi-carbonate of soda, from Syracuse, N. Y., those rates to Clarksville and Nashville are made upon the Eastern trunk line basis to which I have already referred. I can, if it is necessary, give you in detail the factors used in making every one of the rates with reference to the I. C. C. tariff, but it would take several hours to do it, and I judge that it is unnecessary. Some of the rates in that section of the complaint are incorrectly stated, but they have been properly referred to in the answer of the L. & N. Railroad.

Mr. Colston: Then, without going into detail as to the factors of the several rates, etc., it is true, is it not, that with respect to
416 these specific commodities the same competitive conditions apply and explain the differences which apply in connection with other traffic from the territories of the several points of origin which you have already given?

Mr. Goodwyn: Yes sir.

Mr. Colston: In paragraph 10 of the complaint the comparison is made of the rates on sugar from New Orleans to Bowling Green, Kentucky. Please explain how the differences in circumstances and conditions surrounding the transportation of traffic from New Orleans to both points affect the rates on sugar?

Mr. Goodwyn: The rate from New Orleans, not only on sugar, but on all other rates, perhaps a very few exceptions, to Louisville, are made the same as New Orleans to St. Louis, just as the rates from Louisville to New Orleans are the same as the rates from St. Louis to New Orleans; I don't mean that they are the same rates in both directions, but the adjustment is the same. The rate on sugar from New Orleans to Louisville, in car loads, is 17 cents per hundred

pounds, which is also the rate to St. Louis. The rate to St. Louis was made by one of our competitors, for the purpose of handling the business of the American Sugar Refining Company as against the barge lines, believing that if the sugar moved by rail, it would take away from the river and from the barge lines, one of its principal sources of tonnage, and furthermore assist the rail carrier itself in handling the business of the concern. When it was made to St. Louis, that rate was made to Louisville; it has lately been—well not lately, but within the past two or three years—has formed part of a general adjustment of the sugar rates from New Orleans, as compared with the Eastern refineries, conferences being held between the Southern and Northern and the Eastern roads, to bring about an quitable, fair and reasonable settlement of the question which had been vexing everybody for a very long time. The Bowling Green rate of 20 cents a hundred pounds was made because our previous rate of 25c. per hundred pounds did not seem to cover the purposes for which it was intended, that is, to move sugar from New Orleans; there was one period of time, I don't recall at the moment, just how long it was, during which, it is my recollection there were 51 cars of sugar moved from Evansville to Bowling Green by boat, and it was during the time the rate of 25 was in effect. I don't know whether that sugar came from the East during a period when the refineries there had a surplus output and were selling it at extremely low rates and were stocking up everything in sight, and were subsequently moved from Evansville by Bowling Green by boat, or not.

As far as our line is concerned, and in the sugar business, we naturally have an interest in New Orleans, greater than we have in the East. We prefer to see the sugar move from New Orleans. It was considered that the 20 cent rate would accomplish that purpose, and furthermore, 20 cents per hundred pounds was the rate that was asked for by the Bowling Green people. It was established at their request. I think Mr. Graham was one of the gentlemen that asked it.

417 Mr. Colston: Then it is a fact, is it, Mr. Goodwyn, that the lower rate of 17 cents which applies to Louisville, is forced, not only by competition in the Ohio and Mississippi Rivers, but by competition of carrier with carrier and market with market?

Mr. Goodwyn: Yes sir.

Examiner Boyle: What is the rate to Nashville on that?

Mr. Goodwyn: Fifteen cents, sir; the rate to Nashville was made 15 cents, when the rate to Louisville was 15, Mr. Examiner, and at that time the Louisville rate included the dravage charge, but subsequently did not, and the rate was continued to Nashville, at 15, because it was the same net rate as applied at Louisville, the Nashville rate having been made the same as Louisville under the order of the Interstate Commerce Commission.

Mr. Colston: With the elimination of the dravage charge at Louisville, then, Louisville would have had a higher rate?

Mr. Goodwyn: Yes sir.

Examiner Boyle: What is the Clarksville rate?

Mr. Goodwyn: Clarksville, my recollection is, 20 cents.

Examiner Boyle: The same as Bowling Green?

Mr. Goodwyn: Yes sir, the same as Bowling Green.

Mr. Thomas: You mean the drayage charge was added?

Mr. Goodwyn: Paid in New Orleans, for hauling the sugar to the railroad.

Mr. Thomas: And charged to the Louisville purchaser?

Mr. Goodwyn: I don't know how the American Sugar Refining Company made its prices.

Mr. Thomas: I didn't appear in the rate, though?

Mr. Goodwyn: It appeared in the rate this way, that the portion showed that it covered the drayage from the refinery to the depot.

Mr. Thomas: It was 15 cents then?

Mr. Goodwyn: Net, yes sir.

Mr. Thomas: Now, you have raised it to 17?

Mr. Goodwyn: No sir, we raised it to 17 during that period.

Mr. Thomas: The drayage charge is off now?

Mr. Goodwyn: We discontinued the drawage charge.

Examiner Boyle: That drayage charge was about 2 cents?

Mr. Goodwyn: Yes sir, it was two cents.

Mr. Colston: In paragraph XI of the complaint comparisons are made of the rates from Bowling Green, Ky. on eggs and dressed poultry to New York, and on manufactured tobacco from Bowling Green to Cincinnati, Evansville, Louisville and Memphis, with rates to Nashville on the same articles to the same points of destination. Please explain how the differences in circumstances and conditions which surround the transportation of traffic from Bowling Green and from Nashville affect the rates on the commodities stated to the destinations shown in that paragraph of the complaint?

Mr. Goodwyn: There are not only in effect through rates from the East to Nashville, but also from Nashville to the East, and these rates on eggs and dressed poultry from Nashville to the East are the class rates governed by the official classification. I have
418 not gone back into our records to determine when the adjustment was first made from Nashville to the East, I do know, however, that at the present time it is an adjustment that the L. & N. Railroad could not control, except to the extent of advancing its individual rates, and getting out of the business. Whatever the competitive conditions were, and especially the water competitive conditions, I think it is perfectly obvious that competition by water does not actually or potentially exist as concerning certain commodities, and I do not believe there is any actual or potential water competition at Nashville necessitating the continuance of any such rates as these on eggs and dressed poultry. I will say that frankly, that is my personal belief, and I would be very glad indeed to advance the rates on eggs and dressed poultry from Nashville to the East, to the basis of actual com*bina*tion, if I could do so and haul any of the business. I would do so just as quick as I could get the tariff out; but unfortunately, I cannot. This condition, so far as those commodities are concerned, is one that is by no means an agreeable one to me, I will be glad to advance the rate if I could, but I see no benefit that would result to Bowling Green if we did haul

no eggs and poultry out of Nashville and still maintain our present rate at Bowling Green.

Mr. Thomas: Who do you mean to say would haul it?

Mr. Goodwyn: That Nashville and Chattanooga and the Tennessee Central Railroad. So far as the tobacco rates are concerned, they were established from Nashville by our competitors, and over our protest. So far as the tobacco rates from Bowling Green are concerned, they were made after the conference which took place in Louisville in 1906, and were, to the best of my knowledge and belief, agreeable and satisfactory to the Bowling Green interests represented at that conference.

Mr. Colston: In paragraph XII of the complaint comparisons are made of rates on oranges from Jacksonville, Florida, proper, and from Jacksonville, Florida and from beyond, to Bowling Green, Ky., with rates from the same point or points to Louisville, Ky. Please explain how the differences in circumstances and conditions which surround the transportation of traffic from Jacksonville, Fla., to Bowling Green and to Louisville, affect the rates on oranges?

Mr. Goodwyn: The Southern classification makes oranges second class. There are in effect a line of class rates from Jacksonville, both to the West, by which I mean the Ohio River, and to the East. In 1892, which was before my connection with the L. & N. Railroad, you understand, the lines in Florida, anxious to assist in the development of the orange growing industry in that State, reduced the rates on oranges, and made them, instead of second class, the same as fourth class, L. C. L., and on the same as sixth class, in car loads, there having been what they regarded as a proper rail adjustment of the class rates to the East and the West, I have no doubt they considered that in making the uniform reduction to both territories they preserved the parity. They desired, of course, to make the markets of consumption for their fruit as numerous and as extensive
419 as they possibly could, to encourage the growing of oranges, and the shipment over their rails, and the consequent increase of their revenues, and furthermore, influenced by the necessity of placing the Florida orange in competition with the California, and West Indian product. There were in those days large quantities of oranges imported through New Orleans and through Mobile, carried into the interior, to Louisville, Cincinnati, Evansville, distributed generally throughout the territory. The rates were made on the bases I have named, from Jacksonville, and Jacksonville is universally regarded as the basing point for all the Florida territory—anything that goes south of Jacksonville is based on Jacksonville, anything that comes from south of Jacksonville is based the same way. Some time after that the growers, or their representatives—collections of growers, probably established houses in Jacksonville, and they brought the fruit in there and distributed it from Jacksonville. Of course in bringing the fuit in, it meant a terminal service in the delivery at Jacksonville, not only taking that same fruit out, it ment that same terminal service given going in the reverse direction, neither of which terminal services was performed when the fruit was shipped direct from where it was grown to where it was distributed.

In view of these conditions, the Jacksonville line felt that it was entitled to some revenue for that service at Jacksonville, and consequently they advanced the rates, Jacksonville, proper, 3 cents per standard crate. This accounts for the difference between rates of Jacksonville proper and Jacksonville from beyond, so that since that change was made, a through shipment goes on the same basis as it did before, but when it goes into Jacksonville, delivered there, and subsequently reshipped, there is an additional charge of three cents per standard crate for the terminal service. The rates on oranges, both from Jacksonville, Florida, proper, and Jacksonville from beyond, as named in Section XII of the complaint, are wrong. I believe they were based on the Louisville combination, the correct and lower combination on Nashville which is covered by our answer to the complaint. The correct rate, Jacksonville proper to Bowling Green, car loads, being 60.2 per box; less than car loads, 80.2 per box; Jacksonville from beyond, 57.2 per box, car loads, 79.2 per box, less than carloads. The conditions existing at Louisville, from a competitive standpoint are not the same as those existing at Bowling Green; one thing alone, there is not the competition here with the California oranges that there is at Louisville. The same difference in that respect, as Mr. Graham mentioned yesterday, about canned and evaporated fruits. Furthermore, that it would not be the same competition here with the imported orange, unless the L. & N. Railroad would make the extremely unusual adjustment of applying the Louisville rate to Bowling Green, which it has never done heretofore. I do not myself see any tremendous disadvantage here; I doubt if any reduction of the rate would materially increase the movement of oranges—of course, though, that is something I don't know. The difference in rate makes a difference of one-twelfth of a cent to the orange, or about one cent a dozen.

Mr. Colston: In paragraph 13 of the petition complaint
420 is made that the rates on cattle and hogs from Bowling Green to Chicago, Illinois are not properly adjusted as related to Nashville, and complaint is also made that from Nashville to the Ohio River shippers are given the benefit of both single and double deck rates, while from Bowling Green there are no double deck rates effective. Please state what the facts are in this connection?

Mr. Goodwyn: Well, the complaint is wrong. There is no additional charge of two dollars per car added to the charge of 15 cents per hundred, no reconstructing the rate from Bowling Green as alleged in the complaint. That is not correct, and that inaccuracy is fully explained in our answer. I do not know that it is necessary for me to explain that.

Mr. Colston: Explain the reason for applying double deck rates from Nashville, while they are not applied from Bowling Green?

Mr. Goodwyn: The Louisville & Nashville Railroad don't want to handle any double deck hogs at all. We believe it is a dangerous thing to handle them that way, and our belief I think is sufficiently exemplified in our practice. The L. & N. Railroad has not built a double deck car for service on its lines, and has not got in its ownership, not a single double deck car; it handles

no double decks of hogs at all except from points where it is compelled to handle them. The Nashville, Chattanooga & St. Louis Railway, however, looks at that matter different from us, and does handle double deck cars on its line at competitive points as well as locally, the result being that at Nashville they take the double decks, and we have got to. I would like to see it discontinued altogether. It is the source of a great deal of physical difficulty in the handling of the stock, it results in numerous claims for damage that are almost unavoidable. The animals in the upper deck are subjected to a good deal more jostling than they are nearer the trucks. Of course the further away you get from the center of gravity the greater the oscillation, and necessarily the more frequently are the animals thrown from their feet and get down, and when they get down, it is all up with them—the usual Hibernian expression, if you will pardon me, there is no way of getting them up again, and it means damage to the stock that is absolutely unavoidable. I would like to get away from the handling of double deck cars altogether from Nashville, if I could.

Mr. Colston: Mr. Goodwyn, I believe you have possibly explained the reasons which underlie the differences between the proportional rates applying to the Ohio River on traffic to certain points in the South, such as Clarksville, Evansville, and other places in so-called Southeastern territory, and the local rates applicable on traffic to Kentucky territory, but if there is any further explanation that you would like to make in connection with paragraph XIV of the complaint, I should be glad for you to give it now?

Mr. Goodwyn: No sir, I have nothing else, I believe, that I want to say on that.

Mr. Colston: In paragraph 15 of the complaint comparisons are made of rates from Bowling Green, Evansville, Louisville, respectively, to Atlanta, Georgia, Montgomery, Alabama, and Jack-
421 son, Mississippi. Please explain how the rates to the destinations named are affected, if at all, by any differences in the circumstances and conditions which surround the transportation of traffic from the several points of origin named.

Mr. Goodwyn: Well, a thorough explanation of that, Mr. Colston, would involve the history of the Southeastern bases, which I presume is not desired in connection with this complaint. It may be sufficient to say that for rate making purposes and reasons intimately connected therewith, the Southern lines divide what they call their territory into several groups. We have first, and on the west, what are designated as Mississippi River common points, meaning important commercial centers or crossings on the Mississippi River, served by the boats operating in that river—Memphis, Greenville, Helena, Arkansas, on the west bank, Vicksburg, Natchez, Bayou Sara, Baton Rouge, and New Orleans, Louisiana; included along with that same rate adjustment is Mobile, Ala. Next to that tier of states comes what we call West Tennessee and interior Mississippi Valley Junction, the towns such as Milan, Humboldt, Reeves, Paducah Junction, as it was formerly called, Union City, Jackson, Tenn., Corinth, Grand Junction, Holly Springs, Tupelo, Aberdeen,

Starkville, Columbia, Greenwood, Miss., Winona, Miss.; then we have south of that two points that are by themselves: Jackson, and Meridian, Miss., the Illinois Central Railroad maintaining to Jackson, Miss. whatever the Mobile & Ohio makes to Meridian, and the Mobile & Ohio maintaining to Meridian whatever the Illinois Central makes to Jackson. All of those individual points are located in what is called generally Mississippi Valley territory; that is to say, the territory South of the Ohio River, beginning at Paducah, following the line of the Nashville & Chattanooga Railroad to Paris, Tenn., on the L. & N., then via the L. & N. to Milan, thence by the Illinois Central to Jackson, thence by the Mobile & Ohio to Mobile—that does not include the line of the Mobile & Ohio into Birmingham, or its branch into Montgomery. Just east of the Mississippi Valley territory comes what we generally call the Southeast that in turn is subdivided into three groups, the Montgomery group, the Atlanta group, and the Carolina territory, the Montgomery group being that portion of the southeast from which the rate from Ohio River crossings, Louisville and west are made the same, Cincinnati being a differential higher, the Atlanta territory being that to which the rates to — from Ohio River crossings, Cincinnati to Cairo inclusive are the same; the Carolina territory being that to which the rates from Cincinnati to Louisville are the same and the rates from the western crossings a differential higher. Now our rates from Evansville and Louisville to Montgomery are the same, both places; our rates from both Evansville and Louisville to Atlanta are the same; our rates from Evansville to Jackson, Mississippi are somewhat less than from Louisville the rate being made from Evansville a slight differential over the rates from Cairo by the direct line of the Illinois Central Railroad. The rates from Louisville being made, in turn, a slight difference higher than from Evansville, though Cairo is really
422 a basing point. Now this class rate adjustment, not only to Jackson, Atlanta and Montgomery, but to all points in the several territories I have undertaken to describe, represents an extremely important factor in the handling of commerce. There is a large and continuous amount of merchandise under the class rates to those points, not only from the Ohio River, but from Nashville, which is not only a distributing center, but is likewise a manufacturing point of considerable importance. The business that moves from Pittsburg, Cleveland, Columbus, Detroit, Chicago, Indianapolis, Buffalo, etc., passes through the Ohio River and pays, to a very large proportion of it, the class rates south of the river. Now so far as I know, there is not any business from Bowling Green to that territory under the class rate. Bowling Green does not ship hats, caps, boots, shoes, groceries, and iron articles, buggies, wagons, and things of that sort, to the territory that I have referred to, and could not do so, on a number of these commodities, if a manufactory were established here, making that line of goods, I think it is only proper I should say that if there be any factory now, or hereafter, at Bowling Green, serving that territory, the Louisville & Nashville Railroad is perfectly willing to make not

higher than Louisville rates on that business. We have done it already with anything that we had knowledge was being manufactured here, or that anybody would undertake to manufacture here and ship; we have not only done it to that territory, but we have done it to the entire State of Texas and Arkansas, got it published now, our tariffs, have the bases provided for in them covering Bowling Green on anything that they make here so far as I have any knowledge of that manufacture, and if there be anything else that they do make, or will make, here, we will be very glad indeed to extend the bases to such extent, as we could to the important points, without getting ourselves mixed up with the 4th Section.

Mr. Colston: Then, Mr. Goodwyn, it is true, is it not, that the reason for the lower rates from Louisville and Evansville to this territory that you have described on classes that apply from Bowling Green to the same territory is to be found in the fact that from Louisville and Evansville and from Nashville, there exists competition, either by water on the one hand, or between carriers and markets on the other, which does not exist at Bowling Green?

Mr. Goodwyn: Yes, and the further fact, and the more important fact—the more controlling one, is that there is daily constant need of the rates from the Ohio River to *the* Nashville, and there is not any need of them at all here that I have been able to discover. If there is need for them, as I have said, on anything that is going to be shipped from here into that territory, we will be very glad to take care of it; glad to have the opportunity to make here statements just exactly like I made to the committee that visited Louisville.

Mr. Colston: Mr. Goodwyn, I will ask you if the question of rates to and from Nashville, Tennessee and Clarksville Tennessee stations on the Cumberland River, and Louisville, Ky., Evansville and other Ohio River crossings, as compared with rates to and
423 from intermediate or local stations such as Bowling Green Kentucky, has not already been passed upon by the Interstate Commerce Commission?

Mr. Goodwyn: Yes sir, the same question has been before the Interstate Commerce Commission a number of times; for example, in the case of Chamber of Commerce of Chattanooga, against the Southern Railway Company and others, 10 I. C. R. 111, in which the rates to Chattanooga, higher than those to Nashville, were sustained, from the East; in the case of Payne-Gardner Co. vs. Louisville & Nashville Railroad, Interstate Commerce Commission Docket No. 1324, reported in 13 I. C. R. page 638, in which complaint was made of rates on sugar from New Orleans to Gallatin compared with the rates to Nashville and Bowling Green, and the case of Flint & Walling Mfg. Co. vs. The Grand Rapids Ry. Co., and others, Interstate Commerce Commission Docket No. 1497, reported 14, I. C. R. 520, in which rates from Louisville to Gallatin, Tenn. higher than the rates to Nashville and points beyond Gallatin were sustained. In the case of Columbia Grocery Co. vs. L. & N. Railroad, Interstate Commerce Commission Docket No.

2944, reported 18 I. C. R. p. 502, in which higher rates on sugar from New Orleans to Columbia and intermediate points than existed to Nashville and points beyond, were sustained; also in the case of W. S. Duncan and others vs. N. C. & St. L. Railway and others, Interstate Commerce Commission Docket No. 1698, reported in 16 I. C. R. 590, in which there is given a considerable history of the competitive effect of the Cumberland River.

Mr. Colston: Are you familiar with the testimony given on behalf of the carriers in the cases you have just referred to, particularly in so far as that testimony relates to competitive conditions existing at Nashville and other points on the Cumberland River, and at Louisville and other Ohio River crossings?

Mr. Goodwyn: I am familiar with the testimony in the several cases referred to. I am also familiar with the general physical and geographical conditions, as well at the rate adjustments upon which the testimony in all of these cases given by officials of the Louisville and Nashville Railroad was based.

Mr. Colston: I will ask you then, that with reference to the cases you have cited, you make part of your testimony in this case such of the testimony as bears upon the question of relative rates to and from Nashville and Clarksville, stations on the Cumberland River, Louisville, Kentucky, Evansville, Indiana, and other Ohio River crossings, as compared with the rates to and from intermediate or local stations, such as Bowling Green, Kentucky.

Mr. Goodwyn: I will do so, and refer to the testimony given on behalf of the Louisville & Nashville Railroad in the Chattanooga Chamber of Commerce case, the Payne-Gardener case, the Flint & Walling Manufacturing Co. case, the Columbia Grocery Co. case, and the W. S. Duncan and others case, and make the same part of my evidence in this case.

Mr. Colston: Mr. Goodwyn, as to all the rates to and from Bowling Green, Kentucky, which are covered by this complaint,
424 please state whether or not you regard those rates as reasonable in and of themselves, and if you do regard them as reasonable in and of themselves, state why?

Mr. Goodwyn: I consider all the rates mentioned as reasonable, not only in and of themselves, but as reasonable by comparison. In my judgment, a reasonable rate in and of itself is one that does not impose an arbitrary and exorbitant burden upon the traffic and thereby act in restraint of trade; furthermore, it is one that does not yield to the carrier an excessive and unusual profit for either the cost or the value of the service performed. Measured by those standards, I certainly do not believe that the Bowling Green rates complained of in this cause can be considered as anything other than reasonable in and of themselves. But further than that, I regard them as reasonable by comparison. In the first place, the class rates from Louisville to Bowling Green are made on less than the Louisville and Nashville Railroad mileage scale, which mileage scale is the general basis for the company's local rates, and I regard that mileage scale itself as a reasonable scale. All of the commodity rates from the Ohio River to Bowling Green are very ma-

terially less than the company's mileage scale, and they are less than the rates applied generally, not only by the L. & N. Railroad for service from similar distances, but are materially less than the rates authorized as reasonable by the different State Railroad Commissions in the South; they are less than the rates authorized by the other railroads operated in this country for similar service; those rates are made with due regard to the competitive influence of the Green and Barren Rivers, and the proof that they do fairly meet that competition is evidenced by the fact that of all the business reaching Bowling Green approximately eighty per cent. is handled by the Louisville & Nashville Railroad, leaving about twenty per cent. to be handled by the boats. As to the reasonableness by comparison of the outgoing rates from Bowling Green, it is probably sufficient to say that of all the business moving from Bowling Green to the Ohio River and beyond, approximately 95 per cent. is handled by the railroad, and about 5 per cent. by the River. As to the total rate from Chicago, St. Louis, New York and other eastern points to Bowling Green, I consider them reasonable, because they are made up of combinations of reasonable rates, the factors north of the Ohio River being influenced and governed by the highly competitive conditions existing in that territory, and the factors south of the Ohio River being, as just stated, influenced by the water competition at Bowling Green, which competition has been fairly met.

Mr. Colston: Are the rates to and from Nashville and Clarksville, in your opinion, any lower than are necessary to meet the competitive conditions, both rail and water, existing at those points?

Mr. Goodwyn: Unquestionably not. If we regard them as lower than they were necesasry to be for the purpose of meeting that competition, I certainly would be derelict in my duty to the company I am connected with if I failed to use every effort at
425 my command and every influence within my power to secure their advance. I do not believe I am any more unmindful of my duty in that regard than the average man, and I have not undertaken to bring about any general advance in those rates. There are some rates I think too low, some rates that I have protested strongly against when they were established, did all I could to prevent them being put in; but that the vast majority of rates are too low to meet the actual condition I do not believe any railroad would knowingly continue a condition of that kind—would practically be contributing to its own destruction.

Examiner Boyle: The other railroads are to be considered, however?

Mr. Goodwyn: Yes sir, I say to meet the actual conditions of competition—both rail and water.

Mr. Colston: Where you say there are some might be too low, which are lower than the general conditions would warrant, you are unable to raise those immediately while other lines are not of the same opinion as you?

Mr. Goodwyn: Yes, I could not prevent their being put in; I tried to.

Mr. Colston: Do the rates to and from Bowling Green meet, as

far as necessary or proper the competitive conditions existing at that point?

Mr. Goodwyn: Unquestionably they do. The comodity rates from the Ohio River to Nashville and Tennessee points to Bowling Green, *for* as I have already stated, handle at least two-thirds of the entire business we move here; they are less than our rates to points north of Bowling Green. We have commodity rates in effect from the Ohio River to Bowling Green for 114 miles that are less than our rates to Elizabethtown, Ky., 42 miles, I think, South of Louisville; we have rates to Bowling Green which added to the local rate from Bowling Green to stations north of her make actually lower than we are carrying to-day from Louisville to those same points. The Kentucky Railroad Commission has, through the authority invested in it under the Commission Act, authorized relief from the long and short principle of the Kentucky law as to Bowling Green and not as to any point north of here*m* consequently if it is established for the first station just north of Bowling Green, the Bowling Green combination from Louisville, if the long and short haul principle of the Kentucky law would then become operative and we would immediately have to make that the maximum for every station north of that point. We have lower rates, as I have stated, than we have under other distances, and frankly, Mr. Examiner in my judgment, we have some rates into Bowling Green that ought never to have been made. I do not believe we are justified by any competitive conditions that exist here in making the number of rates that we have in effect to-day. I refer particularly to such articles as are almost universally excepted from commodity rate lists, not only in the Southern territory, but in the United States generally, meaning, hats and caps, millinery, drygoods, clothing, boots and shoes, groceries not otherwise specified—practically every-
426 thing in the grocery line. I think our rates ought to be readjusted into Bowling Green. I don't mean to say by that—I want that understood, if you please—I don't mean to say that I think our rates ought to be readjusted into Bowling Green to such an extent as would yield us, the L. & N. Railroad, in the aggregate any higher amount of money than we get to-day, or even as high perhaps, but I do believe that our meeting of the Barren River competition should be done by an adjustment of class rates instead of the list of commodity rates that we are carrying, and the adjustment of class rates which would benefit the community of Bowling Green as a whole, and not the special interests here that happen to handle those particular commodities.

Examiner Boyle: Who is responsible for this present adjustment?

Mr. Goodwyn: The former Traffic Manager of the L. & N. Railroad.

Mr. Colston: You do not mean, though, by that to say, Mr. Goodwyn, do you, that any adjustment should be made with reference to Clarksville, or Nashville, or any other point?

Mr. Goodwyn: No sir, not under any circumstances, any more

than I would make a rate to Clarksville with any relation whatever to Memphis.

Mr. Colston: Is there any reason why Bowling Green should receive the benefit of the competitive conditions existing at Nashville and Clarksville, except in so far as benefit may result to Bowling Green from reduction of its rates by combinations based on Nashville and Clarksville?

Mr. Goodwyn: None at all that I can see. Two competitive conditions existing at one point should not be bodily transferred to some other where they do not prevail. The conditions I think should be fairly met at each point. I think every place should be given the benefit and advantage of its own geographical situation, but I see no justice in giving the benefit of the geographical advantages of one place to another, any more than I would think it was proper for a merchant in Bowling Green within a half block of our freight depot not to get the benefit of his location there, and to be put on the same plane with a man located a mile off away up the hill. I don't see anything fair about that.

Mr. Colston: Are rates to or from Bowling Green in any instances higher than the lowest combinations which can be made on Louisville, Evansville, Clarksville and Nashville or any other point?

Mr. Goodwyn: Not to my knowledge; if they are, we would be very glad to readjust them.

Mr. Colston: Is there anything further, Mr. Goodwyn, with respect to this proceeding that you would like to say?

Mr. Goodwyn: No sir.

Cross-examination:

Mr. Thomas: What railroads now serve Nashville, by entering Nashville?

427 Mr. Goodwyn: The Louisville & Nashville, the Nashville, Chattanooga & St. Louis, and the Tennessee Central.

Mr. Thomas: What are the termini of the Nashville, Chattanooga & St. Louis?

Mr. Goodwyn: Its terminal points are Paducah, Ky., Hickman, Ky., Memphis, Tenn., and on the other end, you might say, Atlanta, Ga.,—the Nashville, Chattanooga & St. Louis Railway having leased the W. & A. Railroad.

Mr. Thomas: How much of the stock of the Nashville, Chattanooga & St. Louis Railway is owned by the L. & N. Railroad?

Mr. Goodwyn: I don't know sir; I think about seventy per cent (70%).

Mr. Thomas: Is it not as much as eighty?

Mr. Goodwyn: I think not.

Mr. Thomas: Your information is they do own a controlling interest?

Mr. Goodwyn: Yes sir, they own a majority. But I want to add this, if I may: From my personal experience with the Louisville & Nashville Railroad, we have no stronger competitor, if any as strong, as the Nashville & Chattanooga Railway.

Mr. Thomas: Well, if you are going to argue that proposition as we go along, we will not get through.

Mr. Goodwyn: That is a statement of fact; not an argument.

Mr. Thomas: Who is Mr. Smith—what is his name? You said he was Third Vice President of the Nashville & Chattanooga Railroad?

Mr. Thomas: He is vice president—Mr. H. F. Smith.

Mr. Thomas: Brother of——

Mr. Goodwyn: Mr. M. F. Smith.

Mr. Thomas: The President?

Mr. Goodwyn: Of the L. & N., yes sir.

Mr. Thomas: Who is Mr. A. R. Smith?

Mr. Goodwyn: He is Third Vice President of the L. & N. Railroad.

Mr. Thomas: What relation does he bear to the other two?

Mr. Goodwyn: He is a son of Mr. H. F. Smith.

Mr. Thomas: Son of H. F., the vice president of the Nashville & Chattanooga?

Mr. Goodwyn: Yes sir.

Mr. Thomas: I believe you said this railroad was completed in 1854, to Nashville?

Mr. Goodwyn: I don't remember the date exactly—1854, yes.

Mr. Thomas: When was the Tennessee Central completed?

Mr. Goodwyn: The Tennessee Central Railroad was completed some 12 or 13 years ago, I believe, just speaking from recollection. I can easily verify it, though, if you want it.

Mr. Thomas: What are the termini of that railroad?

Mr. Goodwyn: The Tennessee Central Railroad, its western terminal is Hopkinsville, Kentucky; its eastern terminal points are Emory Gap and Harriman.

Mr. Thomas: Who is it operating that railroad?

Mr. Goodwyn: At the present time?

428 Mr. Thomas: Yes sir.

Mr. Goodwyn: Tennessee Central Railroad.

Mr. Thomas: Who has been operating just prior to the present time?

Mr. Goodwyn: Some few years ago, two or three, I think, it was split up and the Illinois Central leased the Western part of it, that is from Nashville west, and the Southern Railway the Eastern part of it.

Mr. Thomas: Has the Tennessee Central affected rates in Nashville, Tennessee; have you any reduction of rates in your tariff of published rates?

Mr. Goodwyn: To some extent, but they are incidental, not general.

Mr. Thomas: No general reduction?

Mr. Goodwyn: No sir.

Mr. Thomas: According to Poore's Manual, the Tennessee Central was completed during 1902 and '03; *will* you please file a statement of your rates in effect New York to Nashville January 1st,

1902, also of those in effect January 1, 1905, and the present, on classified articles?

Mr. Goodwyn: I can give you that right now.

Mr. Thomas: I don't care to go into it; I want it filed.

Mr. Goodwyn: I can give you the figures. They are the same as named in your complaint.

Mr. Thomas: And have not been changed?

Mr. Goodwyn: No sir.

Mr. Thomas: And have existed all through those periods, before and after the completion of that railroad?

Mr. Goodwyn: Yes sir.

Mr. Thomas: That railroad was operated under lease for several years?

Mr. Goodwyn: I don't know anything about its interior and fiscal affairs.

Mr. Thomas: It was the road built which Jere Baxter got up, wasn't it?

Mr. Goodwyn: Yes sir.

Mr. Thomas: In which he had Nashville contribute about a million dollars?

Mr. Goodwyn: I think Nashville got stuck some way.

Mr. Thomas: Badly stuck, on the idea that it had no competition, and was seeking some?

Mr. Goodwyn: I suppose that was the idea; I don't know what was in the minds of the City of Nashville.

Mr. Thomas: But they did give a million dollars to it?

Mr. Goodwyn: They gave quite a large sum of money to the railroad.

Mr. Thomas: Did they have no competition prior to that time?

Mr. Goodwyn: I don't know about that.

Mr. Thomas: You spoke of the tonnage on the Cumberland River, as compared with the tonnage on Barren River; do you know the tonnage to Clarksville, Tennessee, by river?

429 Mr. Goodwyn: No sir.

Mr. Thomas: Tonnage to Nashville, by river?

Mr. Goodwyn: No sir.

Mr. Thomas: Have you examined the Government reports to see the tonnage that is carried by water below Nashville?

Mr. Goodwyn: No sir.

Mr. Thomas: And also that below Clarksville?

Mr. Goodwyn: No sir.

Mr. Thomas: Have you examined the Government Report to see the tonnage that passes through the lock on Barren River just below Bowling Green?

Mr. Goodwyn: No sir.

Mr. Thomas: And also the tonnage that is locked in and out through the Woodbury lock, thirty miles below Bowling Green?

Mr. Goodwyn: No sir, I have not.

Mr. Thomas: So you do not know, then, whether Green River has more tonnage carried through its locks and over its water way than the Cumberland or not?

Mr. Goodwyn: I do know this; that approximately twenty per cent of all the business that is brought into Bowling Green comes by river; and I do know that over 90 per cent of the river tonnage comes from Evansville, and practically 100 per cent of it comes either from or through Evansville, and I do know that taking the total business we haul, and with that information before me, and having the general knowledge that I have about the business that reaches Nashville by river, that the tonnage that reaches Nashville by river must be greater than that which reaches Bowling Green.

Mr. Thomas: Do you know the percentage of tonnage that you haul as compared to that which reaches Clarksville by river?

Mr. Doodwyn: No sir, I do not.

Mr. Thomas: Then you cannot give it?

Mr. Goodwyn: No sir.

Mr. Thomas: You spoke at great length of the condition of river traffic at Nashville and Clarksville when the Louisville & Nashville Railroad Company's line first entered those places?

Mr. Goodwyn: Yes sir, not any longer than I wanted to.

Mr. Thomas: And the competition it had to meet?

Mr. Goodwyn: Yes sir.

Mr. Thomas: Do you mean to say that in the period of years that intervened there had been no reduction of rates by the Louisville & Nashville Railroad Company to meet competition at Nashville?

Mr. Goodwyn: That rates to and from Nashville have been changed, as I said.

Mr. Thomas: Greatly reduced?

Mr. Goodwyn: No sir, I think not.

Mr. Thomas: From the original rate?

Mr. Goodwyn: I think not; on the contrary, I think the rates at Nashville to-day, if anything, are higher?

Mr. Thomas: Then they were originally?

430 Mr. Goodwyn: I don't know about originally; not originally because they were originally put in on a 70 cent scale.

Mr. Thomas: I am asking originally when they first met the river competition, as you said; aren't they materially less than they were then?

Mr. Colston: I think you are mistaken about his saying that that it was a 70 cent scale when they met the river competition; he said the 70 cent scale was put in before they met the river competition.

Mr. Goodwyn: What I said was that when the L. & N. Railroad first came to Nashville, its rates were made on the regular basis of a 70 cent scale, 70 cents being first class—that its superintendent made application to the Board of Directors of the company for authority to reduce the rate, in order to meet the river competition, and was given the authority to do so; so that when we first got there our rates were not made to meet the river competition.

Mr. Thomas: Has there been any reduction since that first reduction, by the authority of the Board of Directors?

Mr. Goodwyn: I couldn't say about that.

Mr. Thomas: Throughout the years?

Mr. Goodwyn: Oh, there have been reductions and advances at times.

Mr. Thomas: The rates have been revised, since that?

Mr. Goodwyn: Yes sir.

Mr. Thomas: Now about Clarksville, do you mean to say that the rates at Clarksville are to-day what they were when the L. & N. Railroad first went in there?

Mr. Goodwyn: No sir, I don't say that; I didn't men to say that at all.

Mr. Thomas: Are they as high to-day as they were than?

Mr. Goodwyn: I expect they are higher.

Mr. Thomas: Higher, as a whole?

Mr. Goodwyn: Yes sir, as a whole I think they are higher than they were during the period of active and continuous water competition.

Mr. Thomas: I mean when they first entered there?

Mr. Goodwyn: Oh I don't know about that.

Mr. Thomas: I am not talking about intervals and periods.

Mr. Goodwyn: Oh both as to Nashville and Clarksville, the L. & N. Railroad met this competition to the extent it saw fit to do so, just as it has done at Bowling Green.

Mr. Thomas: But you do not say that they are not lower than when first published, the first original rates?

Mr. Goodwyn: No sir, I wouldn't undertake to say that. I can, if you wish, file from our records, a statement of what our class rates were, as our records show from the beginning.

Mr. Thomas: Now speaking of the large number of commodity rates to Bowling Green, are there, or not, also a large list of commodity rates to Clarksville and Nashville?

Mr. Goodwyn: Yes sir.

Mr. Thomas: Does your tariff sheet show those commodity rates?

431 Mr. Goodwyn: Yes sir.

Mr. Thomas: Published tariff?

Mr. Goodwyn: Yes sir.

Mr. Thomas: On file with the Interstate Commerce Commission?

Mr. Goodwyn: Yes sir.

Mr. Thomas: And Clarksville, Tenn., has a large list, like Bowling Green?

Mr. Goodwyn: A different kind of list, not like Bowling Green, but has a large list, as Bowling Green has.

Mr. Thomas: In a majority of instances, in a large number of instances, are not the commodity rates to Clarksville, Tenn., and also to Nashville, Tenn., on traffic passing through Louisville over the L. & N. Railroad, as applied to these points, less than the commodity rates to Bowling Green?

Mr. Goodwyn: I expect that is true, yes sir.

Mr. Thomas: But the tariff sheets will show?

Mr. Goodwyn: Oh yes. Our present rates from the Ohio River to Nashville are carried in Agent Washburn's Southeastern Tariff

No. 7, I. C. C. No. 78. Our present rates from the Ohio River to Bowling Green are carried in L. & N. Tariff G. F. O. 1535, I. C. C. No. A 11547.

Mr. Thomas: Does that give the Clarksville, too?

Mr. Goodwyn: Yes sir. The same tariff that shows the Nashville rate shows also the Clarksville.

Mr. Thomas: You spoke of the Cumberland River carrying out vast quantities of ties, being hauled out of there, to your regret?

Mr. Goodwyn: Yes sir.

Mr. Thomas: Is it not true that Green River is one of the greatest haulers of ties by water of any river?

Mr. Goodwyn: I think not to the extent of the Cumberland.

Mr. Thomas: You think not to the extent of the Cumberland?

Mr. Goodwyn: No sir, because the business that moves out of the Cumberland, a very large part of it, comes from territory two hundred and odd miles above Nashville.

Mr. Thomas: But you have not examined the Government reports, to see?

Mr. Goodwyn: No sir, I have not.

Mr. Thomas: You don't know that Green River tonnage shows the third or fourth tonnage of slack water navigation in the United States?

Mr. Goodwyn: No sir, I do not; but I just simply take it for granted, and believe it to be true, that four hundred miles of river yield more tonnage than 190.

Mr. Thomas: Do you know who are the stockholders in the Evansville & Bowling Green Packet Company?

Mr. Goodwyn: I do not; other than Captain Howell.

Mr. Thomas: He is the only one you know?

Mr. Goodwyn: He is the only one I know as a stockholder; I only know that from his having told me.

Mr. Thomas: When these Bowling Green men visited Louisville, to see about these rates, in 1906, or the first of 1907, did you
432 write any letters, or have any communication with Capt. Howell, in regard to the visit of these men, and any of the rates were discussed?

Mr. Goodwyn: I think not.

Mr. Thomas: You did not?

Mr. Goodwyn: No sir.

Mr. Thomas: Did you write a letter to any one in regard to that, for instance who would——

Mr. Goodwyn: Well, I don't know; I wouldn't undertake to say that I didn't write a letter to anybody.

Mr. Thomas: Who would be your freight man you would write to about it, Third Vice President, has charge of it?

Mr. Goodwyn: A. R. Smith.

Mr. Thomas: Did you write a letter to him?

Mr. Goodwyn: Yes sir, I wrote Mr. A. R. Smith a letter, reporting my conference with the Bowling Green gentlemen.

Mr. Thomas: The latter part of January, 1907?

Mr. Goodwyn: No, I don't think it was that time; yes, I believe

it was in January, 1907, I made a report to Mr. Smith of a conference which was held, simply as a matter of record, though as a matter of fact, Mr. Smith was present himself, during a considerable part of the conference.

Mr. Thomas: Will you secure that letter, or a copy of it, and file it as a part of your deposition in this case?

Mr. Goodwyn: No sir, not unless I am compelled to do so.

Mr. Colston: I don't think we ought to be required to do that, unless the relevancy of the letter is shown.

Mr. Thomas: I think it is part of the Bowling Green situation; I think it is relevant, and covering the discussion of these rates, I want any correspondence he had with A. R. Smith with reference to the Bowling Green situation, passing these rates, at this time, about January 31, 1907.

Mr. Colston: If the complainants will state any particular item which is shown by that letter which relates to the complaint in this proceeding, there might be some grounds for asking that that letter be produced. They certainly have no right to go into our private files and ask for a report of a conference or meeting that was made by one traffic officer to his superior, without any statement or indication of the fact which is desired to be proved by the introduction of that particular paper. We do not care to have our private records thrown open for the investigation of our competitors, and we object to producing any letter, unless complainants will state specifically what they expect to prove by that letter, and what the contents of the letter are.

Mr. Thomas: Our idea is, representing the complainant, that this letter will show, when produced, and we think the Commission is always entitled to those things, the phases of the rate question, and the demands of the Bowling Green people, and that that demand was affected by the river situation, which is one of our points in this case, and the relation of the river boats to the railroad.

Examiner Boyle: You mean the Packet line?

433 Mr. Thomas: Yes, the relation that it bears to the railroad, is one of our propositions.

Examiner Boyle: This report that you made to Mr. Smith was a report of the fact that these gentlemen——

Mr. Goodwyn: It was a report that I made dealing with the conference I had had with the representatives of the Bowling Green commercial interests, stating the different commodities which I had discussed with them, stating what I thought about it, as one officer of the road to his superior, just as I would make a report on any subject that affected the interests of the company; I do not recall, now, the letter in minute detail, but in writing such a letter I would be supposed, and frequently do, to express myself in a way that I would not care to file as a public document. I do not think the private views of the officers of the L. & N. Railroad are matters for this complaint.

Mr. Thomas: If you give it to the Commission, I do not care anything about seeing it myself.

Examiner Boyle: Reference has been made to this exhibition and the phraseology of the Act is generic and not very specific.

Mr. Thomas: Maybe I can go a little further, with some questions along that line.

Examiner Boyle: I would like to get in the record exactly what this is.

Mr. Colston: We have no objection whatever to showing that letter to the Commission or any representative of the Commission. We do not care to have it made public.

Examiner Boyle: How will that be done? Will that be forwarded to the Commission as part of the record in this case?

Mr. Colston: We do not want it made a part of the record in the cause. We will show it to you, Mr. Examiner, if you wish to see it.

Mr. Goodwyn: I will be perfectly willing and glad to show it to you.

Mr. Thomas: That is all right; I do not want to get any of your secrets.

Mr. Goodwyn: I mean this: I make reports to my superiors of interviews with people that come to see me, and I frequently express my opinion of the people personally.

Mr. Thomas: I have no information that you did, in this case, but at the same time, did you not also have some correspondence with Captain Howell,—he is not here to answer?

Mr. Goodwyn: No sir, I did not, to the best of my recollection. If I wanted to make a rate from Louisville here I would not say anything to Captain Howell about it.

Mr. Thomas: Will you search your file, and produce to the examiner any correspondence that you had with Capt. Howell about any Bowling Green rates, about the period during December, 1906, January, 1907, and February, 1907?

Mr. Goodwyn: If the Commission wish it, I have no objection.

Mr. Thomas: Also any answers that Capt. Howell made to you?

Mr. Colston: We will show that, if the Commission de-
434 mands it, of course. We do not like to have a question calling for a general production of papers, without any indication as to their relevancy to the question in issue.

Examiner Boyle: What is your idea Mr. Thomas, what do you think these papers will show?

Mr. Thomas: Our idea is this, as we are contending throughout, that the L. & N. Railroad control the situation on the river with the boat, and that this correspondence—he can certainly produce it—he said he reported to Capt. R. A. Smith; and letters to Capt. Howell, and Capt. Howell's replies to those letters, to show the effect that the river has no transportation, and why it does not have a greater effect, how a community of interests existed between the boat, I mean the Evansville & Bowling Green Packet Company, and the Louisville & Nashville Railroad Company as affecting our natural and potential right to use the river, as affecting the freight rates.

Examiner Boyle: Then your argument, based on facts of that nature that you expect to show by this correspondence, would be

that you were not getting the benefit of the water competition that you should enjoy?

Mr. Thomas: Yes sir, as fully as we should enjoy it, because the railroad controls the situation; I have shown that from the fact that they put the Sun out, in order to let other boats come in and reduce rates temporarily to get the benefit of other boats to put that out of business and control the situation absolutely by river and rail. They have testified that our only two lines of carrying freight, for getting traffic in or out of Bowling Green, was by the L. & N. Railroad, and by this river, and we insist that they are controlled together, that is, the boat line in operation, and the railroad.

Mr. Colston: We deny, of course that the L. & N. Railroad Company does control the river line, but even if we did, what has it to do with the complaint which is now being heard before this Commission?

Mr. Goodwyn: The boat line is not a defendant.

Mr. Colston: The boat line is not a defendant; we are not in an investigation under the Sherman Act for conspiracy in restraint of trade; we are here to answer and defend a complaint, and there is not one word in that complaint that justifies an order or a request from the complainants that we produce, without any definite statement as to dates or contents, all letters that were written by us to an officer of the Company, written by one officer of the company to another officer of the company, without any definite statement as to what those letters will show, or what the dates are, or what they expect to prove by them that is competent to this complaint; in the first place, it is not at all relevant to this proceeding, what we may have written to Capt. Howell.

Examiner Boyle: That all depends. I would not like to pass upon that, but it seems that so far as the inconvenience resulting from compliance with the complainants' request, the actual location of the correspondence, that would not be so difficult, because it would all be filed doubtless under one head, and can be located.

435 Mr. Thomas: It appears to have been covered——

Examiner Boyle: I do not feel at liberty to pass upon it one way or the other, but will put it up to the Commission.

Mr. Thomas: I have already filed a demand with the Commission; I asked that they be made to produce the letters touching upon the carriage by tariff on the river, and the influence of one upon the other?

Mr. Colston: The tariff of the Evansville and Bowling Green Packet Company is filed with the Commission; the Evansville & Bowling Green Packet Company was not made a party defendant in this proceeding.

Mr. Thomas: The Interstate Commerce Act has not been extended, so far as I understand, to cover boat lines in any respect; as part of a railroad system they might be.

Examiner Boyle: Wherever they join the railroad and publish a joint rate.

Mr. Thomas: Of course not independent.

Mr. Goodwyn: The tariff of the Evansville & Bowling Green

Packet Company being filed with the Commission, and its rates named, is not the Evansville & Bowling Green Packet Company obligated to maintain those rates?

Mr. Colston: The Act speaks for itself; the Act does apply to water carriers having through rates in connection with rail. But I will ask you complainants to give the dates of the letters that they wish, and to state the content of the letters, or what those letters are expected to prove—not any letter that may be written about a certain thing.

Examiner Boyle: I think they have stated what they expected to prove.

Mr. Colston: That they asked for letters, that don't show that.

Examiner Boyle: No, I presume not.

Mr. Colston: They have asked for all letters written——

Mr. Thomas: No, I said letters passing from Mr. Goodwyn to C. R. Smith touching on the Bowling Green situation, freight rates in and to Bowling Green, covering the period of time I have just named; also letters written to Capt. Howell, and his replies thereto, touching the same situation, in December, 1906, January, 1907 and February, 1907, that is just three months; it only touched one point and one situation.

Mr. Colston: Touching the situation in what respects?

Mr. Thomas: Anything that affects the freight rates in and to Bowling Green, or by river, either one; anything where that was taken up because these men had been there to see them, and it was natural for me to suppose and believe that there was some correspondence about it; logically, there would be.

Mr. Colston: I think I can cover that proposition by a question to the witness, if you will let me ask it now; that is this: Mr. Goodwyn, you have been asked to produce certain letters supposed to have been written, or that may possibly have been written, or that may or may not have been written, during three months, touching a situation covered by a conference with certain Bowling Green
436 merchants concerning Bowling Green rates, which letters may have passed between you and Mr. Howell, and which have, as counsel has stated, affected the rate situation; did any letters pass between you and Mr. Howell at that time under which any arrangements or agreements were effected, or which in another way affected the rate situation?

Mr. Goodwyn: Mr. Colston, I have already testified that to the best of my knowledge and belief—and it is my positive conviction—that the Louisville & Nashville Railroad owns no part——

Mr. Thomas: That is not the point.

Mr. Goodwyn: If you will let me get through—of the Evansville & Bowling Green Packet Company, the Louisville & Nashville Railroad, so far as I know, has now, and had nothing whatever to do with the making of rates from Evansville to Bowling Green, which were agreed to by the Evansville & Bowling Green Packet Company and Mr. Greer, representing the citizens of Bowling Green. The Louisville & Nashville Railroad fixed its own differentials over the Evansville rate, and so far as I know, did it without any conference

with any representative of the Bowling Green & Evansville Packet Company. During the period to which Mr. Thomas has particularly referred, December, 1906 to January and February, 1907, I did not communicate with Capt. Howell at all about the Bowling Green rate. I did write a report to Mr. Smith of my conference with the Bowling Green representatives, and in that report I did state to him what rates we had discussed with them, and what I thought about them, not as affecting the Evansville & Bowling Green Packet Company, at all, but as affecting what I considered to be then, and what I consider to be now, the situation at Bowling Green, and to the best of my knowledge and belief in that letter, I made absolutely no reference to the Evansville & Bowling Green Packet Company, as a concern. I did refer, no doubt, to the river, and merely stated, that perhaps this, that or the other rate met the river situation, I did not see any occasion for making any change. I referred to other matters, probably, and expressed my opinion that it would be well to meet them.

Mr. Colston: And that letter which you refer to as having written, and which contained your report of the conference is the one which we have offered to show to the Examiner?

Mr. Goodwyn: Yes sir.

Mr. Thomas: I will ask you, do you say that you did not write a letter to Capt. Howell, in the latter part of January 1907, and receive a reply from him, in regard to your conference with the Bowling Green business men, and in that letter discussing certain rates and changes in certain rates?

Mr. Goowdyn: No sir, I did not.

Mr. Thomas: Will you search your file, and if you can find one, and find that your memory is at fault in that regard, will you produce it?

Mr. Goodwyn: If the Commission wants it, of course I will. You understand, of course, that I am speaking from recollection.

437 Mr. Thomas: I thought you had grown positive about it?

Mr. Goodwyn: I am positive from my recollection, yes sir.

Mr. Thomas: Well, we ask that it be done, that this correspondence be produced, and that is as far as we can go with it. There is no use in arguing about it.

Examiner Boyle: I do not feel at liberty to pass upon that point. I will present it to the Commission and let them take what action they see fit.

Mr. Colston: The Louisville & Nashville Railroad Company is willing to produce to the Examiner or to any other representative of the Commission, any letter passing between Mr. Goodwyn and Mr. Howell during any of the three months that counsel has mentioned, provided a definite reference is given to the letter by proximate date, and by a statement as to what that letter contains, in order that we may know what letters are desired.

Examiner Boyle: I imagine that counsel for complainant has made that statement as fully as possible.

Mr. Colston: He has asked for anything touching the question of rates on Bowling Green, regardless of any question as to what they

may show; if he limits his request to any letter indicating any agreement or arrangement concerning those rates, that would be something definite, enough for us to proceed upon, and state the proximate dates, if he says the latter part of January, we would be willing to accept that as the proximate date.

Examiner Boyle: It does not seem to me like the file of the L. & N. Railroad regarding this Bowling Green Situation in 90 days should become so voluminous that it would be difficult to find the correspondence. The complainant has given you the names and fixed the period of ninety days, the names of Capt. Smith and Capt. Howell, and Mr. Goodwyn, with those three names and that general subject, it would not be very difficult.

Mr. Colston: Does that general subject relate to a conference held in 1907, or to proceedings now before the Commission, we will have something definite to go on.

Examiner Boyle: I understand that it is contended by this complainant that this correspondence has a direct bearing on the present proceeding. Let the record stand as it is, and I will present the matter to the Commission for their action.

Mr. Thomas: Mr. Howell, you said, is sick, and unable to be here.

Mr. Goodwyn: Yes sir.

Mr. Thomas: Would you undertake, in his behalf, from his boat files for the same period, to secure any letter that he might have had from you, or any copy of any reply he may have made to you touching the same proposition as stated above?

Mr. Colston: We would not absolutely undertake to do anything of the sort. The Evansville & Bowling Green Packet Company is not a party to this proceeding. The Commission does not issue subpœnas duces tecum against persons not parties to the proceedings, except the paper is described with accuracy, and except it appear
438 distinctly that it is material to the investigation in hand, and we certainly will not undertake, or a witness of this company will not untertake to produce a record from the files of another company.

Examiner Boyle: I don't expect the Commission will ask you to do that, and furthermore, the correspondence or information asked by the counsel for the complainant, if obtained through this channel, would be a duplication of the information to be obtained from the files of the L. & N. From that fact, I think that only the one request is necessary.

Mr. Thomas: I asked that from the fact that he said last night that his cross-examination would relieve us of the necessity of having Capt. Howell.

Mr. Colston: In order that the proceeding may not be delayed, we will show to you any letter that was passed between Mr. Howell and Mr. Goodwyn during any of three months mentioned by counsel for complainants touching the adjustment of rates at Bowling Green and the conference with Bowling Green merchants. Although we do not think it is relevant to this proceeding.

Examiner Boyle: Well, now, if that will be satisfactory to Mr. Thomas and I understand it is——

Mr. Thomas: Yes, provided you get the letters, and show them.

Examiner Boyle: Yes, but with the restriction, according to counsel for the defendant, that it be not made a part of this record.

Mr. Colston: To be used for the information of the Commission.

Mr. Thomas: The Commission can use it if it is put in the record; I want it for use in this matter. I don't care to read the letters myself, if there is anything in there I ought not to read.

Mr. Colston: We have no objection to having the Commission know everything that passed in this matter. We do not think any letters passed between Mr. Goodwyn and Mr. Howell but if they did pass any such letters, we will show them to you or any other representative of the Commission, for the information of the Commission.

Examiner Boyle: At what time do you make this tender?

Mr. Colston: We will go up on the first train from here, and show it to you at Louisville in the morning, or endeavor to show them to you tonight, if we can get into the files.

Examiner Boyle: Tomorrow will do. Then it is understood, Mr. Thomas, that counsel for the defendant will exhibit his files when I go to Louisville tomorrow morning and go through the files with Mr. Colston or Mr. Goodwyn, on Mr. Colston's tender, in compliance with your request.

Mr. Thomas: All right.

Examiner Boyle: That settles that.

Mr. Thomas: Mr. Goodwyn, how are the rates from Bowling Green arrived at, from New York?

Mr. Goodwyn: By combination.

Mr. Thomas: What classification do you use, official classification to Louisville?

Mr. Goodwyn: To Louisville and Cincinnati.

Mr. Thomas: I am using that as an illustration?

439 Mr. Goodwyn: Then the Southern classification, with Note 28 Exception on that and our commodity rate.

Mr. Thomas: Does that Southern Classification, after you once get a rate, apply throughout the whole distance?

Mr. Goodwyn: No sir, it is made a combination of the two separate factors.

Mr. Thomas: Which classification applies to the rates?

Mr. Goodwyn: No classification; the rate is made up on commodity. If you are asked to put a rate on an article you find what that rate is on that article under the official classification to Louisville, and how it is rated south of Louisville, and combine the two rates together.

Mr. Thomas: In order to arrive at rail and water rates East to Bowling Green, do you not add to the rate from New York to Louisville covered by the official classification the local rates Louisville to Bowling Green covered by the Southern classification?

Mr. Goodwyn: Yes sir, with the exceptions I have mentioned.

Mr. Thomas: Isn't it a fact that the rates from the East to Nashville, are the same, whether the traffic moves via all rail routes or all water routes?

Mr. Goodwyn: I believe it is, yes.

Mr. Thomas: Is it not true that the rail and water rates, say from Louisville, Evansville, Clarksville and Bowling Green, and all rail rates to those points?

Mr. Goodwyn: Yes sir.

Mr. Thomas: In other words, are not the rail and water rates usually differentiated under all rail rates?

Mr. Goodwyn: There are all rail rates from New York to the different Ohio River crossings, and there are rail and water rates to the different Ohio River crossings which are less than the all rail rates; the two are combined to make the Bowling Green rate, our factor south of the river being the same in either case.

Mr. Thomas: In arriving at through rates from Chicago to Bowling Green, do you not add the rate from Chicago to Louisville to the local rate from Louisville to Bowling Green covered by the Southern Classification?

Mr. Goodwyn: No sir, I think the Chicago rate makes lower on Evansville than on Louisville.

Mr. Thomas: On Evansville?

Mr. Goodwyn: Yes, because the rate from Chicago to Evansville is the same as the rate from Jeffersonville to New Albany; the rate from Chicago to Louisville is higher; our rate from Louisville to Bowling Green is the same as the rate from Evansville to Bowling Green, but we do not apply them from Jeffersonville to New Albany.

Mr. Thomas: You do not publish through rates from Chicago to Bowling Green?

Mr. Goodwyn: No sir.

Mr. Thomas: You do from Chicago to Clarksville, Tennessee?

Mr. Goodwyn: I think Mr. Fulton does.

440 Mr. Fulton: No sir, there are no through rates published from Chicago to Clarksville, Mr. Goodwyn, none now.

Mr. Thomas: How are the rates from New Orleans to Bowling Green on sugar, fixed? I believe you stated how that was done, and that the river did that, because they shipped by River?

Mr. Goodwyn: Yes sir.

Mr. Thomas: Does the river haul any now, or are you hauling it all?

Mr. Goodwyn: I think we are hauling it, pretty much all.

Mr. Thomas: What is the Clarksville rate on sugar, from New Orleans?

Mr. Goodwyn: Twenty cents.

Mr. Thomas: Store door delivery?

Mr. Goodwyn: I couldn't say as to that; I didn't look that up, because that was not referred to in the complaint.

Mr. Thomas: What is the rate to Nashville?

Mr. Goodwyn: Fifteen cents.

Mr. Thomas: The river competition there has no effect on that rate, has it?

Mr. Goodwyn: The Nashville rate was made the same as the Louisville rate, under the circumstances that I explained in my direct examination.

Mr. Thomas: How is the rate made from Louisville, Atlanta, Montgomery and Jackson?

Mr. Goodwyn: To undertake to do that briefly it would take me all the afternoon to go into it.

Mr. Thomas: Is it made on my reference to water?

Mr. Goodwyn: It is made in a general way with reference to it, in a way.

Mr. Thomas: Is it not the Baltimore rate?

Mr. Goodwyn: The Louisville rate to Atlanta is the same as the Baltimore rail and water rate.

Mr. Thomas: Now there is no water that runs from Louisville to Atlanta, or from Nashville to Atlanta, or from Louisville to Jackson or Montgomery, or from Nashville to any of those points, is there?

Mr. Goodwyn: Well, except Montgomery from that; there is no direct water, but water connection can be had with Montgomery.

Mr. Thomas: How?

Mr. Goodwyn: By Mississippi River to New Orleans and from there to Mobile, and up the Alabama River.

Mr. Thomas: Isn't the rate to Atlanta influenced by some river to the sea-coast?

Mr. Goodwyn: The rate to Atlanta is influenced by the Montgomery rate.

Mr. Thomas: And by any rate from the East by a River?

Mr. Goodwyn: No sir, I couldn't say that it is.

Mr. Thomas: I believe it is 73 miles nearly from Bowling Green to Nashville?

Mr. Goodwin: 73 miles.

441 Mr. Thomas: Why wouldn't that influence also affect the rate to Bowling Green, around that way?

Mr. Goodwyn: Simply because there would be no occasion for it; there would be no reason why it should.

Mr. Thomas: You gave the distance from Nashville, around, coming from New York, I believe, as 790 odd miles, wasn't it?

Mr. Goodwyn: I can tell you exactly.

Mr. Thomas: Well, about?

Mr. Goodwyn: Yes, I think it was 799.

Mr. Thomas: Bowling Green is only 73 miles this side of Nashville?

Mr. Goodwyn: Yes sir.

Mr. Thomas: Are not the rates to Columbus, Georgia, influenced by the ocean and the Chattahoochie River?

Mr. Goodwyn: I think probably so.

Mr. Thomas: In fixing the same rates below Baltimore to the Southeast, they prepare to meet any competition or river competition from Louisville or from the Southeast?

Mr. Goodwyn: No sir, we don't— not direct competition, I mean by that.

Mr. Thomas: Has not Owensboro, Kentucky, the same rate southeast to Louisville?

Mr. Goodwyn: Yes sir.

Mr. Thomas: How are the Owensboro, Ky., rates fixed from the East?

Mr. Goodwyn: They are made by adding to the Evansville rate the transfer cost; in other words, the rate East to Owensboro is made the same as Evansville, and Evansville is made by adding the bridge toll to the Evansville rate.

Mr. Thomas: What size town is Paducah?

Mr. Goodwyn: I think Paducah is approximately 25 or 30 thousand.

Mr. Thomas: About 20,000, isn't it?

Mr. Goodwyn: I think it is more than that, I am not sure, I am making more of a guess than anything else.

Mr. Thomas: I note on cabbage from Evansville to Bowling Green, you make less than a car load rate of 20, and car-load rate of 17½, while to Clarksville and Nashville, under that your carload and less than carload rates are 15. Why should Clarksville and Nashville have the same rate whether traffic is shipped in carloads or less than carloads, while Bowling Green has a different and higher?

Mr. Goodwyn: I have already explained that our rates from Bowling Green are made on certain differences, water rates are different from car loads and less than car loads, and ours are made on differences over the water rates; it carries a higher rate, on carloads or less than carloads; to Nashville and Clarksville, however, it is a quantity proposition.

Mr. Thomas: Then you give Bowling Green no benefit of the water rates on Evansville on this carrier proposition?

442 Mr. Goodwyn: Under your question we do, because there is a boatload and a carload. Personnally I do not approve of carload and less than carload rates on cabbage.

Mr. Thomas: But Clarksville and Nashville have the carload or less?

Mr. Goodwyn: They have a difference in quantity rate.

Mr. Thomas: On any quantity, then, carload or less, different from that to Bowling Green, because you say that is water?

Mr. Goodwyn: Yes sir, that is the way we made up the rates into Bowling Green, and if the boats will take ours at carload rates we will take ours at any quantity.

Mr. Thomas: You have been giving to Bowling Green practically the same rates on harrows from Hamilton, Ohio, as you gave to Clarksville and Nashville. Why was the river competition of Bowling Green more forcible on harrows than it was on some other commodities, say coffee?

Mr. Goodwyn: I don't make any rates from Hamilton, Ohio. I make rates from the Ohio River to Bowling Green, and from the Ohio River to Nashville and Clarksville; if the rates on harrows to Bowling Green are approximately the same as to Nashville and Clarksville, it simply happened that way, because, as I told you, of the basis we made up Bowling Green was above or below the river; I stated that we made our rates from the Ohio River to Bowling Green certain differentials higher than the water rates; if that

resulted in approximately the same total as Nashville and Clarksville, it was purely an accident, not that they were considered at all when it was made; I never considered a Nashville rate at all in making a Bowling Green rate.

Mr. Thomas: Why should the rate on lead pipe, both carload and less than carload, be 47 from Cincinnati to Bowling Green, while Clarksville you make a less rate at less than carload, 25 and carload 15?

Mr. Goodwyn: I have already stated that; it would be a repetition of what I said in general terms on testifying about any other commodity rate.

Mr. Thomas: You say the Nashville rate is made up by the Ohio River rate?

Mr. Goodwyn: No, I don't say that.

Mr. Thomas: Is the Nashville and Clarksville rate made up by the rates to Ohio River points, I mean?

Mr. Goodwyn: I would have to go back to the time when the rate on that particular commodity was established, and see whether we made it or some other railroad made it, or whether the boats made it or not; I am not undertaking to do that as to every commodity that could possibly be shipped.

Mr. Thomas: Isn't that quite a difference in the rate between Bowling Green and Clarksville on lead pipe—I say it is quite a difference?

Mr. Goodwyn: Oh yes, it shows for itself.

Mr. Thomas: Why should a rate on salt from Marine City,
443 Michigan, to Bowling Green be less than from Nashville and Clarksville or less — car load travel and more on car load travel?

Mr. Goodwyn: Just for the reasons mentioned, on account of the way the rates are made.

Mr. Thomas: Would that be an accident, too?

Mr. Goodwyn: Yes, I want to repeat now what I have said before, that the rates to Bowling Green, Kentucky, were made without considering what rates were in effect to Nashville or to Clarksville, and the rates to Nashville and Clarksville were made without considering the rates to Bowling Green.

Mr. Thomas: Why should woodenware from St. Louis to Bowling Green take a rate on less than car load of 43 while woodenware less than car load to Nashville pays 45, more, on the other hand—two cents more—on the other hand wooden ware, car loads, pay 46 Cincinnati to Bowling Green as aginst 25 car load lots to Clarksville and Nashville?

Mr. Colston: Mr. Examiner, don't you think we have gone far enough on the question of making comparisons between rates to points which the witness has stated were wholly unrelated, and therefore the man is bound to answer in the previous answer of the witness. The witness has just stated that the rates of Bowling Green were made without reference *with* the rates to Nashville or to Clarksville, that the rates to Clarksville and to Nashville were made without reference to Bowling Green; now counsel insists on asking, item by

373

item, why were the rates to one place made such a relation to the rates in other places, when the witness has said they have no relation whatver, they simply happened to be made that way under the bases that apply separately to different points.

Mr. Thomas: What is your rate from Gallatin, Tennessee, on eggs and poultry?

Mr. Goodwyn: I don't know, sir.

Mr. Thomas: You do not know what it is?

Mr. Goodwyn: No sir, it is not part of the complaint, and I didn't look into it.

Mr. Thomas: What is the rate from Chicago to Nashville?

Mr. Goodwyn: On what?

Mr. Thomas: First class goods, say?

Mr. Goodwyn: I think it is about 80 cents.

Mr. Fulton: It has to be a combination of the two rates, 35 plus whatever it is from there south.

Mr. Goodwyn: I think you have it in your complaint; we have answered that complaint, stating whether it was right or not. However, if you want it repeated? 73 cents, first class.

Mr. Thomas: What is it to Evansville?

Mr. Goodwyn: I think it is 35. (Thirty-five.)

Mr. Thomas: What are the rates, the differential from Nashville southeast and south, do you know? Have you a memorandum of it there?

Mr. Goodwyn: No sir.

Mr. Thomas: Are the local rates higher than the differentials?

444 Mr. Goodwyn: What local rates?

Mr. Thomas: Clarksville, South and southeast?

Mr. Goodwyn: You mean the local rates from Clarksville and Nashville higher than the differentials between Clarksville and Nashville, south—yes sir, I think they are.

Mr. Thomas: How far is it from Clarksville to Nashville, going by the L. & N. from Guthrie?

Mr. Goodwyn: I think it is 64 miles, as well as I remember; it is fifty odd by the Tennessee Central.

Mr. Thomas: I will ask you if these are not the classes to locals: Class 1, 25¢, class 2, 20¢, class 3, 17¢, class 4, 15¢, class 5, 15¢, class 6, 15¢, class A, 15¢, class B, 15¢, class C, 14¢, class D, 13¢, class E, 15¢, class H, 15¢, class F, 26¢.

Mr. Goodwyn: I have already said I did not know, I can only say the same in answer to that.

Mr. Thomas: And are not these the differentials asked you about? 13, first, 13 again, 13 again, 8, 8, 6, 6, 6, 6, 6, 8, 8, and 11, corresponding to the same classes as above?

Mr. Goodwyn: I said that I didn't know that, and I have answered the same, now I can very easily furnish it, though, if you want it.

Examiner Boyle: How is that banana rate that reference was made to yesterday made to Nashville, Clarksville, and Bowling Green?

Mr. Goodwyn: The rate on bananas from New Orleans to Nashville is made in the distribution of tropical fruit that are imported, from New Orleans, and through Mobile. There is a line of steamers, you know, which operates in there, in that fruit company, and several independent concerns that handle fruit from New Orleans and Mobile, and the rates are made primarily by the direct lines handling them, and for the purpose of enabling fruit to move from the gulf ports as compared to the other routes that are available for the transportation of the bananas.

Mr. Thomas: The bananas are really imported only through New Orleans and Mobile?

Mr. Goodwyn: No sir, they are handled through Charleston, now, and Savannah and through Philadelphia, very largely, and Baltimore.

Examiner Boyle: There is no comparison with the way they move through the other ports?

Mr. Goodwyn: I couldn't say how the cargoes are toward the North Atlantic ports; the Bowling Green rate on bananas is made on combination.

Examiner Boyle: The rate on bananas to Nashville, Bowling Green and Clarksville would be affected by the rate on bananas to any other port, would it?

Mr. Goodwyn: No sir, Nashville might be affected by a rate from Savannah. It might be; I don't know that it would.

Examiner Boyle: What is the reason for the marked difference in the rate? The rate is about double to Bowling Green and to the other two points?

445 Mr. Goodwyn: In the first place, I do not consider that the Bowling Green bananas is a car load proposition; and a car load commodity rate, to my mind, Mr. Examiner, is warranted only when there is a sufficient justification for it as a carload proposition. In other words, if bananas move to Bowling Green at all, I am inclined to think they would move in less than car loads, because in comparatively small quantities.

Examiner Boyle: It was testified yesterday that they had moved four or five cars, I believe, in about that many weeks.

Mr. Goodwyn: That may be; I have no knowledge of it.

Examiner Boyle: That is almost as high a rate as from New Orleans to Texas.

Mr. Goodwyn: We have found that our rate has never been made so high on bananas as to affect the movement of it; we have no commodity rates to Franklin, Kentucky, or Tennessee, Pulaski, or Cullmann, Alabama, or any other points on our line. I don't know of any particular reason why Bowling Green should be excepted.

Examiner Boyle: What is the rate to Bowling Green, is it commodity or class?

Mr. Goodwyn: It is combination.

Examiner Boyle: Of the rates to Louisville?

Mr. Goodwyn: Plus whatever the rate out is, which is the lowest.

Examiner Boyle: A combination of commodity and class?

Mr. Goodwyn: Yes sir.

Examiner Boyle: The commodity rate goes to Clarkvsille?
Mr. Goodwyn: Yes sir, I think it does.

B. G. DAVIDSON, recalled as a witness having been previously sworn, testified as follows:

Mr. Davidson: We have taken the matter up with Mr. Goodwyn, and told him this could be made a fine distributing point for bananas. We have been handling them in cars at some of our other points, and when we moved in here, we took up the rates, and why should there be such a difference, when a car of bananas moving over the L. & N. to Louisville at 39, and to Bowling Green, at 74, 114 miles longer haul, and what is their reason for turning down a request like that, and say we cannot do nothing for you?

Mr. Goodwyn: Are you testifying or arguing the question?

Examiner Boyle: I don't think we ought to go into that any further now; the gentlemen state the banana business is not brought up in this petition.

Mr. Davidson: Yes sir. You were asking about that, and I asked you if I could speak there.

Examiner Boyle: It is not really involved in this complaint; and I merely brought it in on account of the general situation.

Mr. Thomas: I see nails in kegs, the rate from Pittsburg, Pennsylvania to Bowling Green, less than car lots 41, car lots 35½ to Clarksville and Nashville, both less than car lots 30, and in car lots 28. Do you know of any reason why there should be that
446 difference in rates, when the traffic would pass by Bowling Green, on to Clarksville and Nashville from Pittsburg?

Mr. Goodwyn: It would be rail, it would not be water.

Mr. Colston: That is the same question in answer to which the witness previously stated.

Mr. Goodwyn: You don't have to pass by rail to get to Clarksville. You are putting a suppositious question.

Mr. Thomas: It was a rail rate I asked about.

Mr. Goodwyn: There is no commodity that moves more freely by water than this that you mention.

Mr. Thomas: Then it is the water situation at Clarksville and Nashville that produces the result?

Mr. Goodwyn: I presume so.

Mr. Thomas: That was what I was driving at. Wrapping paper, unprinted, from Cincinnati, Ohio to Bowling Green, Kentucky, moves at a rate by rail now of less than car lots at 46, and car lots at 43, and moves to Clarksville and Nashville, less than car 25, car, 16½; is that due to water transportation?

Mr. Goodwyn: I don't know sir; I couldn't tell that without going back to the time that the rate was established.

Mr. Thomas: You couldn't tell a reason for that, then?

Mr. Goodwyn: Not a specific reason, no.

Mr. Thomas: I see that seeds move from Evansville, Indiana, by rail to Bowling Green, clover seed, less than car lots 28, car 20; garden seed, less than car 29, car 27; grass seed, less than car 28, car, 25,

and that all of these various kinds of seed move from Evansville, Indiana, to Clarksville, Tennessee, by rail, irrespective of car lots or in any quantity, at 15.

Mr. Goodwyn: I could only make the same answer.

Mr. Thomas: Is that a water proposition?

Mr. Goodwyn: I could only make the same reply as I did to your last question; I have not investigated the particular rate.

Mr. Thomas: You cannot tell why it is?

Mr. Goodwyn: No sir, I would not undertake to say without investigation.

Mr. Thomas: Syrup in cans, from Chicago, Illinois to Bowling Green, less than car 45, car 32½; Clarksville, glucose or corn syrup, in barrels, syrup of all kinds, 27 less than car lots, 25; Nashville, glucose and cannery syrup in barrels, syrup of all kinds, 25; is that a water proposition, or can you tell why that is?

Mr. Goodwyn: I am unable to say, Mr. Thomas.

Mr. Thomas: Haven't you made up any figures as to the revenue produced in Clarksville by the ingoing and outgoing freight at the same year, at the same time you did for Bowling Green?

Mr. Goodwyn: I gave it.

Mr. Thomas: Not for October, though?

Mr. Goodwyn: No sir, I only had that made up after I got here, or rather got it, after I got here.

Mr. Thomas: That was what you gave, was the L. & N.'s part?

Mr. Goodwyn: Yes sir.

Mr. Thomas: Their part alone?

447 Mr. Goodwyn: Yes sir.

Mr. Thomas: You show, from your statement, there, that outgoing freight from Clarksville exceeded the outgoing freight from Bowling Green; a large part of that was tobacco, wasn't it?

Mr. Goodwyn: I presume it was.

Mr. Thomas: Because of Clarksville being in the tobacco market?

Mr. Goodwyn: Yes, a large part of Bowling Green was tobacco.

Mr. Thomas: At the first conference held in Louisville between these business men and yourself, wasn't Mr. James H. Wilkerson present?

Mr. Goodwyn: I think he was, Mr. Thomas, but I wouldn't say positively.

Mr. Thomas: He didn't come with these men, did he, representing Bowling Green?

Mr. Goodwyn: I don't know: I couldn't say about that. The first conference, as well as I recall—I don't pretend that it is absolutely accurate—I think Mr. Dubose gave the names of those who were coming up, and we furnished transportation for them, and for Mr. Graham's wife, incidentally, too, and I don't know why Mr. Wilkerson went; he certainly didn't come at my solicitation.

Mr. Thomas: Hadn't he been representing the boat line here in Bowling Green?

Mr. Goodwyn: I understood that Mr. Wilkerson was their agent here.

Mr. Colston: Mr. Goodwyn, you have been asked with reference

to the rates on a large number of commodities concerning which you stated that the rates to Bowling Green were made absolutely without relation to rates to Clarksville or Nashville, what the reasons were for the lower rates to Clarksville and Nashville than to Bowling Green, and you have stated that you could not tell why those differences existed; you mean by that, do you not, that you had already explained the situation generally with reference to the three points, and that you simply had not investigated the particular commodities concerning which answer was made?

Mr. Goodwyn: That is exactly what I meant.

Whereupon, at 2:30 o'clock, P. M., on the 28th day of November, 1909, the hearing of the above entitled matter was closed.

(Note: Oral argument is requested.)

448 COMPLAINANTS' EXHIBIT No. 1.

Docket 4310.

Annual Report of the Chief of Engineers, 1910.

Appendix H H.

Report Upon the Improvement of Rivers and Harbors in the Louisville, Ky., District.

Lytle Brown, Captain, Corps of Engineers, U. S. A., in Charge.

Received Dec. 15, 1910. U. S. Engineers' Office, Louisville, Ky.

Annual Report of the Chief of Engineers, 1910.

Appendix H H.

Report Upon the Improvement of Rivers and Harbors in the Louisville, Ky., District.

Lytle Brown, Captain, Corps of Engineers, U. S. A., in Charge.

Interstate Commerce Commission. Docket No. 4310. Exhibit No. 1. Witness, M. H. Crump. Complainants. Date Nov. 27, 1911. Steno. Beall.

[*Extract from the Annual Report of the Chief of Engineers to the Secretary of War.*]

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
WASHINGTON, September 30, 1910.

* * * * * * *

Improvement of Rivers and Harbors in the Louisville, Kentucky, District.

This district was in the charge of Lieut. Col. J. G. Warren, Corps of Engineers, to December 13, 1909, and in the charge of Capt.

Lytle Brown, Corps of Engineers, since that date. Division engineer, Col. William T. Rossell, Corps of Engineers, to September 21, 1909, and Lieut. Col. J. G. Warren, Corps of Engineers, since that date.

1. Falls of the Ohio River at Louisville, Ky.—Improvements under this title have included the enlargement of the basin immediately above the locks of the Louisville and Portland Canal, the enlargement of the head of the canal, and straightening, deepening, and controlling the water flow in the Indiana Chute channel.

449 The work of enlarging the basin above the canal rocks was completed in 1893.

The original conditions at the other localities are more conveniently and fully described under separate headings, as follows:

Head of Louisville and Portland Canal.—Previous to 1883 the approach to the canal at its upper end, above the Louisville Bridge Company's bridge at Fourteenth street, was so narrow as to constitute a source of much expensive delay to the large quantity of traffic which came down the river on ordinary rises. The canal proper from Ninth to Fourteenth streets was only 100 feet wide and curved between the two points, so that progress was slow and accidents frequent and unavoidable. The greater part of the dike marking the north side of the approach to the canal was submerged when the river reached a stage of 8.4 feet upper canal gauge, and at stages of 9 feet or more a strong current set out from the shore, thus carrying many vessels against the dike and, at high enough stages, over it onto the rock ledges. This approach was 1,800 feet long and varied in width from 400 feet at the upper end to 100 feet opposite Ninth street. Its area was wholly insufficient for the required breaking and rearrangement of tows preparatory to entering or leaving the canal.

Indiana Chute.—This is the main channel of the river by which commerce passes over the falls when the stage of water is such as to permit navigation via that route. Originally it was very crooked, with swift currents and whirls, filled with dangerous rocky points projecting from the sides and bottom, and it could be navigated only at stages of 11 feet or more, upper canal gauge. Even at such stages the services of special skilled pilots of long local experience and having intimate knowledge of the channel conditions were essential for reasonably safe passage through it.

Projects.—The original project for the enlargement of the head of the Louisville and Portland Canal was adopted in 1883 and proposed the enlargement of the canal, beginning at a point a short distance below the railroad bridge at Fourteenth street and extending eastwardly to the cross dam, so as to not only straighten and widen the canal proper, but also provide ample space for the necessary rearrangement of tows about to enter or leave the canal. This was slightly modified in 1885, so far as the location of the new north wall was concerned. A revision of the project was made by a Board of Engineer officers January 28, 1890, and approved by the Chief of Engineers January 31, 1890. This revision modified the area formerly proposed to be excavated and determined the number and kinds of structures, etc., to be erected. As approved, it provided for enlarging the canal on its northerly side from a point 725 feet below

the railroad bridge at Fourteenth street, where the width of the canal was abruptly increased from 90 feet to 210 feet. This latter width is then gradually increased through a distance of nearly 2,800 feet to 325 feet at the head of the canal proper, at which point the enlargement is expanded into a capacious basin or harbor 1,200 feet wide and practically parallel to the Kentucky shore. The structures proposed were a new retaining wall on the north side of the canal,

a movable dam about 800 feet long, a fixed dam extending
450 from the movable dam at the westerly end of the basin to the

south abutment of the movable dam in the Middle Chute opening of the cross dam, the excavation of rock within designated limits to the same grade as the canal bottom, the construction of certain walls and slope revetment on the south side of the canal, and the removal of the old structures within the limits of the proposed enlargement. Under date of March 31, 1899, a further modification of some of the details of the project was considered by a Board of Engineer officers and their recommendations approved by the Chief of Engineers April 8, 1899. These later modifications, together with the work outlined in the report approved January 31, 1890, constitute the existing project toward the completion of which operations are now directed. The totals of estimates under the original project and the several revisions are as follows:

Project of 1883, page 1539, Annual Report of the Chief of Engineers for 1883	$1,335,363.00
Revision approved January 31, 1890, page 2217, Annual Report of the Chief of Engineers for 1890	710,230.40
Modification approved April 8, 1899, page 2545, Annual Report of the Chief of Engineers for 1899	300,391.92
A revision of the latter estimate was made November 13, 1900, approved by the Chief of Engineers November 17, 1900, and amounted to	398,359.12

The foregoing relates particularly to the improvements at the head of the Louisville and Portland Canal.

Prior to January 31, 1890, there was no specific comprehensive project for the systematic improvement of the Indiana Chute channel, although much work, consisting of the removal of some of the more dangerous rock ledges, had been done under estimates and allotments from appropriations for improving Ohio River. On the date just mentioned the project submitted by a Board of Engineer officers for the radical improvement of this chute was approved by the Chief of Engineers. This project had for its object the widening and deepening of the channel by rock excavation to specified grades within certain limits and the control of water flow in the channel by means of dikes, etc., so as to make this channel available for descending navigation drawing 6½ feet at stages of 8 feet, upper canal gauge. However, only a part of the work necessary for the purpose in view was included in the estimate accompanying the report of the Board, it being stated:

As the exact knowledge of the results of that work [i. e., the work estimated for in the Board's report] would be of great importance in fixing the details of location and cross section of the

additional works that will be required, it would be as well to leave the determination of the additional work above the bridge to a later day.

The estimates for work on this chute since the adoption of a specific project therefor are as follows:

Project approved January 31, 1890	$138,610.97
Modification approved April 8, 1899	74,320.98
Revision of estimate approved by the Chief of Engineers November 17, 1900	129,651.99

451 A consolidation of the projects for the enlargement at the head of the canal and the improvement of the Indiana Chute was authorized by the Chief of Engineers June 28, 1897, and since that date funds have been provided for work at both localities under one title of appropriation.

Work under that part of the project relating to the Indiana Chute having been completed, a Board of Engineer officers was assembled to determine, as anticipated in the project of 1890, what further work was essential to provide the requisite depth necessary to facilitate the passage of traffic through this channel. The report of the Board was submitted December 16, 1901, and approved by the Chief of Engineers December 30, 1901. The items of additional work found to be necessary to produce the desired result and the estimated cost thereof are as follows:

Submerged dam at Whirlpool Point (large stone), 2,500 cubic yards at $3	$7,500
Raising movable dam north of canal wall	2,500
Removing old dam and building movable dam, 1,000 feet, at $75	75,000
Longitudinal contracting dikes (concrete), 22,300 cubic yards, at $12	267,600
Submerged dams below bridge (concrete), 3,000 cubic yards, at $20	60,000
Rock excavation, 3,200 cubic yards, at $3.50	11,200
Contingencies, 10 per cent	42,380
Total	466,180

For this latter work the board prescribed the order in which it should be done, and stated that it was possible that a part of the work might become unnecessary if certain results were produced by the submerged dam at Whirlpool Point, and in that event about $125,000 would probably be saved from the estimated cost.

Subsequently, in House Document No. 492, Sixtieth Congress, first session, the Ohio River Board recommended the omission of all of the foregoing items, except that for removing the old dam and building a movable dam at the head of the falls (No. 41 of the series), and in lieu of such omitted items proposed the following to increase the facilities for passing the falls:

(1) To widen the narrow portion of the canal to 170 feet, thus permitting the passage of a down-bound tow of loaded coal boats and an up-bound tow of empty coal boats, each tow 3 abreast; (2) to construct a new single-lift concrete lock south of and by the side of the present lock, available dimensions of the chamber to be 85 feet by 600 feet, thus permitting the passage at one lockage of 9 coal boats, or 12 coal barges; (3) to create a pool above the falls with

elevation of pool surface at 412.004 (9 feet on upper canal gauge), by the replacing of the wooden dam between Middle and Indiana chutes by a Boulé dam with crest at 412.004, which work is already provided for and under way, and by the construction of the sections of dam recommended by the district engineer officer in the project approved by the Chief of Engineers on December 28, 1903, with crests at 412.004 instead of 411.004, recommended therein, this height of crest being desirable for either a 6-foot or a 9-foot slack-water navigation, or even if the river is not further improved by the slack-water method; (4) to remove the rock necessary to complete the widening of the basin at the head of the canal contem-
452 plated by the present approved project; (5) to reconstruct the three sections of Boulé dam just north of the head of canal with crest at 415.704, instead of crest at 412.504, as provided for in present project, thus eliminating the cross current across the head of the canal, which current now makes it very difficult for tows to enter the canal at stages between 8 and 12.7 feet. It is proposed to leave the crest of the present fixed concrete dam at 411.004 to serve as a fixed weir for the low-water discharge of the river.

All elevations are in feet above mean tide at Sandy Hook, N. J.

The estimated cost of the work proposed by this Board is as follows:

Widening canal to 170 feet, etc.	$673,000
New lock and appurtenances	773,000
New dams	240,000
Reconstructing Boulé dam at head of canal	31,000
Removal of rock in basin	43,000
Total	1,760,000

Of this estimate the act of March 2, 1907, provided for the completion of the third, fourth, and fifth items, and this work has been completed except so far as concerns the construction of boats for maneuvering the movable sections of the dam.

The remaining two items, first and second, and the work proposed thereunder, constitute the existing project.

The height of the new dam is such as to afford a minimum depth of 9 feet upstream to Madison, Ind., and a minimum depth of 6 feet on the lower miter sill at Lock No. 1, Kentucky River.

Following is a brief synopsis of expenditures under the allotments and projects summarized above:

Expended from allotments, 1881, to January 31, 1890		$116,049.80
Expended under project of 1883, for enlargement of head of canal, to January 31, 1890		347,380.68
Reserved, Office Chief of Engineers, United States Army		1,874.20
Expended under project for enlarging canal basin at locks		33,000.00
Expended under revised project to January 31, 1890, to June 30, 1897:		
On enlargement at head of canal	$298,856.35	
On Indiana Chute channel	103,602.81	
		402,459.16
Expended under appropriations for enlargement at head of canal and Indiana Chute, in accordance with project of January 31, 1890, to March 31, 1899		208,659.75

Expended under appropriations for enlargement at head of canal and Indiana Chute, in accordance with the modified project of March 31, 1899 (approved April 8, 1899)	459,075.27
Expended under the project recommended by the Ohio River Board	276,337.67
Total	1,944,836.53

Expenditures during the fiscal year, 1910, were for work, as follows:

Office expenditures and miscellaneous	$1,564.99
Sections of dam, Nos. 6, 6A, 7, 8, and 9	40,538.54
Repairs and care of plant	2,333.86
Removal of rock	2,894.33
Total	47,331.72

453 The results derived from the expenditures to date have been of marked advantage to traffic and commerce and greatly facilitate their movements. The enlargement of the basin immediately above the locks was completed in 1893 and increased the width of the canal at that locality from 90 feet to 215 feet throughout a distance of 800 feet. The enlargement at the head of the canal, completed during the past fiscal year, begins at a point 725 feet below the Fourteenth Street Railroad Bridge and extends eastwardly to a short distance above the dam, and affords a capacious basin varying in width from 210 feet to 1,200 feet.

In the Indiana Chute above the Fourteenth Street bridge, the channel width has been increased from 200 feet to 400 feet, and all rock within these limits excavated to grades specified in the project. At Wave Rock and Willow Point all excavation and the dikes have been completed. The depth of water over Wave Rock and Willow Point approximate very closely the depth anticipated; i. e., 8 feet when there are 8 feet on the upper canal gauge. But that result was not attained for the upper portion of the chute; however, it can now be navigated with ease by heavy-draft coal boats at stages of 11.5 feet, or more, upper canal gauge.

It is proposed to apply the amount now available toward the preparation of plans, purchase of land, and preliminary work essential for beginning the proposed enlargement of the canal and building the new lock. The amount recommended for expenditure during fiscal year 1912 is to be applied toward payments for contract work at present, it being expected to execute the majority of the work under two contracts, one of which will cover that to be done on the north side of the canal and the other that to be done on the south side of the canal, which arrangement, it is anticipated, will be more favorable to rapid progress.

July 1, 1909, balance unexpended	$84,994.05
Amount appropriated by river and harbor act approved June 25, 1910	50,000.00
	134,994.05
June 30, 1910, amount expended during fiscal year, for works of improvement	47,331.72
July 1, 1910, balance unexpended	87,662.33
July 1, 1910, outstanding liabilities	1,056.51
July 1, 1910, balance available	86,605.82
Amount (estimated) required for completion of existing project	a$1,336,000.00
Amount required for expenditure in fiscal year ending June 30, 1912, for works of improvement. Submitted in compliance with requirement of sundry civil act of June 4, 1897	(b)

(See Appendix H H 1.)

a Exclusive of the balance unexpended July 1, 1910.
b See page 1006 of this report.

454 2. Operating and care of Louisville and Portland Canal.—This canal was constructed by a private corporation, acting under a charter granted by the Kentucky legislature in 1825 and subsequent acts of the same body extending the time for completion and increasing the capital stock. It was completed and the first boat passed through it December 22, 1830. At that time there were three combined lift locks, each with a lift of about 8 2/3 feet, a width of 50 feet, and length of 200 feet. The width of the canal proper was from 64 to 68 feet at normal stages, with a depth of nearly 3 feet at extreme low stages of the river. There was no dam at the head of the canal. The United States became a stockholder in the corporation in 1826, and gradually increased its holdings until all of the outstanding stock and bonds passed into its possession.

In 1860 an enlargement and extension of the canal, which included new locks, was begun under the corporate management and resulted in the width of the canal being increased to 90 feet, with three basins, or passing places, and the construction of two new combined lift locks, with a total lift of about 26 feet. Each of the chambers of the new locks has a width of 80 feet and an available length of 350 feet. The new locks were opened to navigation February 6, 1872.

The United States assumed charge of the work of enlargement of the canal and construction of a dam at the head of the canal subsequent to the allotment of funds for that purpose in 1868, but the operation of the canal and collection of tolls remained under control of the corporate management until June 11, 1874, upon which date the entire control of the canal was assumed by the United States, pursuant to the act of Congress of May 11, 1874, which provided that the canal should be held "free of all tolls and charges, except such as are necessary to pay the current expenses of said canal and

keep the same in repair." Tolls were entirely abolished after midnight July 1, 1880, and since that date the expenses of operation and maintenance of the canal have been borne directly by Treasury funds made available by the act of March 3, 1881, and the indefinite appropriation for "Operating and care of canals and other works of navigation," act of July 5, 1884, as amended and reenacted by section 6 of the river and harbor act of March 3, 1909.

The general project for operation and care of the canal by expenditures under allotments from these acts contemplates the operation of the canal locks, the operation of the dredging plant to keep the canal clear of deposit brought into it by high water, and the repair of existing structures, so as to maintain the whole system in good serviceable condition. The funds are provided under estimates submitted annually at the beginning of each fiscal year and allotments therefor.

The approval project, estimate, and allotment for the fiscal year 1910, in addition to the provisions for ordinary current supplies, miscellaneous work of maintenance, operation of locks and dredging plant, included an item partly providing for replacing the old frame stable with a new substantial building of brick on concrete foundation, so designed as to give shelter for the horses and vehicles
455 belonging to the canal, as well as afford needed additional storage room. The estimate for the year amounted to $96,454, and the funds thereunder made available July 14 and August 16, 1909.

In reporting the total of expenditures made in connection with this work it seems best, for the purpose of clearness in showing the general application, to subdivide the total to date into amounts for each period indicated, as follows:

From allotments and appropriations, September, 1868, to June 30, 1882, for completion of new locks, enlargement of canal, and for cross dam at head of canal, payment of bonds, etc	$1,463,200.00
From tolls collected by United States, June 11, 1874, to midnight July 1, 1880, for operation and maintenance	417,069.38
From allotments from act of March 3, 1881, for operation and maintenance	214,062.91
From allotments from act of July 5, 1884, for operation and maintenance	2,133,565.82
From allotment from act of March 3, 1909, for operation and maintenance	75,094.88
Total	4,302,992.99

The amount expended during the past fiscal year for operation and maintenance is $75,094.88, not including outstanding liabilities June 30, 1910.

The canal is available to commerce at all stages of the river less than 12.7 feet, upper canal gauge, and affords free navigation around the Falls of the Ohio River at stages of water when the passage can not be made by the river channel.

The zero of the upper canal gauge is 403.004 feet above mean tide at Sandy Hook, New Jersey. The lowest recorded reading of the

upper gauge is 1.7 feet; the highest reading on the same gauge is 46.7 feet.

Under the regulations prescribed by the Secretary of War for the use, administration, and navigation of this canal the maximum draft of vessels that can be passed through the canal is limited to the depth of water above zero of the gauge at the time the boat enters the canal.

References to more extended information concerning original condition, purchase, and progress of the improvement of this canal are given on page 491, Annual Report of the Chief of Engineers for 1904.

During the fiscal year ending June 30, 1910, 4,329 boats, barges, and small craft passed through the canal, carrying 699,333 short tons of freight. During the same period 1,075 boats, barges, and small craft passed over the falls via the open-river channel, carrying 341,990 short tons of freight, thus making the aggregate movement 5,404 boats, barges, and small craft and 1,041,323 tons of freight.

For a comparative statement of traffic and commerce at this locality for the past sixteen years see the report on this work by the district officer.

(See Appendix H H 2.)

456 3. Lock and Dam No. 48, Ohio River, near Henderson, Ky.—The river and harbor act of June 25, 1910, makes provision for continuing improvement of the Ohio River with a view to securing a navigable depth of 9 feet, in accordance with report submitted in House Document No. 492, Sixtieth Congress, first session, and with a view to the completion of such improvement within a period of twelve years the act made an appropriation of $1,150,000 to be applied to the purchase of sites for 18 locks and dams, and toward the construction of certain others.

An allotment of $50,000 has been made from this appropriation for the purchase of site and beginning construction of Lock and Dam No. 48, and work thereon will be commenced during the coming fiscal year.

Amount allotted from appropriation made by river and harbor act approved June 25, 1910	$50,000.00
July 1, 1910, balance unexpended	50,000.00
Amount (estimated) required for completion of existing project	*a* 1,790,000.00
Amount required for expenditure in fiscal year ending June 30, 1912, for works of improvement. Submitted in compliance with requirement of sundry civil act of June 4, 1897.	(*b*)

a Exclusive of the balance unexpended July 1, 1910.

b See page 1006 of this report.

4. Operating and care of lock and dam at Grand Rapids, Wabash River.—This lock and dam was built from funds derived from appropriations for improving Wabash River, Indiana and Illinois, and opened to navigation in November, 1893. The available length of

the lock is 214 feet; width, 52 feet; depth on lower miter sill at low water, 3.5 feet; depth on upper miter sill at normal pool stage, 5.08 feet. As such stage the pool above the lock affords slack-water navigation about 12 miles, and the maximum draft that can be carried is about 2 feet. Conditions beyond the pool are mentioned in the report for improving Wabash River, Indiana and Illinois.

The expenses of operating the lock were paid from the appropriations for improvement of the river until March 1, 1897, since which date they have been paid from annual allotments from the indefinite appropriation for "Operating and care of canals and other works of navigation," act of July 5, 1884, as amended and reenacted by section 6 of the river and harbor act of March 3, 1909.

The first and subsequent annual projects proposed the operation of the lock and the maintenance of it and the appurtenant structures in good serviceable condition. The expenditures under these projects to June 30, 1910, amounted to $55,186.40.

The project for the fiscal year 1910, provided for the operation of the lock, ordinary current repairs, the replacing of the old wooden guide and protection cribs with new concrete walls, dredging the lock chamber and entrances thereto, backing the dam, and repairing the lower slope of the dam, at an estimated cost of $44,963, which amount was made available by allotment dated July 15, 1909. From the sale of contract prints there was deceived the sum of
457 $11.70, which was deposited to the credit of the Treasurer of the United States to be credited to the allotment.

The amount expended during the fiscal year ending June 30, 1910, not including outstanding liabilities, is $20,306.40.

Operations under the contract for new guide walls, protection crib, etc., have been in progress, but the work has been prosecuted with a lack of vigor, resulting in great delay. During the fiscal year the work accomplished is as follows: 1,234.11 cubic yards of rock excavation, 3,588 cubic yards of crib excavation, 1,120 cubic yards of earth excavation, 881 cubic yards embankment, 1,342 cubic yards back fill, 9,663 cubic yards dredging, 800 cubic yards stone filling for dam, and 757.6 cubic yards stone filling in walls.

The timber for repairs to the lower slope of the dam has been received and stacked ready for use as soon as conditions become favorable.

During the past fiscal year 291 boats, barges, etc., 1,075½ short tons freight, and 86 passengers passed the lock. The small quantity of traffic is probably due to the fact that the lock was closed on account of the repair work in progress from September to January.

A comparative statement of traffic and commerce passing the lock during the past fourteen years will be found in the report on this work by the district officer.

(See Appendix H H 4.)

5. Green River, above the mouth of Big Barren River, Kentucky.—Originally this part of Green River was much obstructed by snags, large bowlders, and overhanging trees. Dam No. 4, Green River, afforded slack water for about 18 miles above the confluence

of Green and Barren rivers. The fall in that part of the river above slack water and below Mammoth Cave, Ky., a distance of about 29 miles, was approximately 27 feet.

The original project is that submitted under date of August 11, 1891 (printed in Annual Report of the Chief of Engineers for 1891, p. 2481). It proposes the extension of slack water navigation from the upper limits of Pool No. 4 of Mammoth Cave by the construction of two locks and dams at an estimated cost of $361,346.40 for both. No revision of the project and estimate has been made except as provided by the river and harbor act of March 3, 1905, for work of snagging and clearing banks of Nolin River, which will be affected by slack water from Dam No. 6, Green River, for which $5,000 has been appropriated.

The amount expended to June 30, 1910, exclusive of outstanding liabilities on that date, is $365,428.16.

As a result of these expenditures, Locks and Dams Nos. 5 and 6 have been completed and opened to navigation, thus extending slack water to Mammoth Cave, Ky., and through a part of the rich mineral district bordering the river which previously had no convenient-y accessible transportation route.

Commercial statistics are given in the report for operating and care of locks and dams on Green and Barren rivers, Kentucky. (Appendix H H 6.)

458 References to more extended information may be found in Annual Report of the Chief of Engineers for 1904, page 498.

Report for examination of the river from Lock No. 6 to Munfordville may be found in House Document No. 377, Fifty-ninth Congress, first session.

Sufficient data are not available upon which to determine the effect of the improvement on freight rates, if any.

No work was in progress during the year. The expenditures made were in payment of awards in condemnation proceedings to acquire land for a roadway from the abutment site of Dam No. 6 to the nearest public highway.

The project having been completed, it is proposed to carry the small balance available to the surplus fund of the Treasury and make no further report until additional funds become available for work on this river.

July 1, 1909, balance unexpended	$580.17
June 30, 1910, amount expended during fiscal year, for works of improvement	335.13
July 1, 1910, balance unexpended	245.04

(See Appendix H H 5.)

6. Operating and care of locks and dams on Green and Barren rivers, Kentucky.—The original system of slack-water navigation on the these rivers, including 4 locks in Green River and 1 lock in Barren River, with a total length of pools of approximately 200 miles, was completed by the State of Kentucky in 1841. The State

retained control and management of the system until 1868, when it was leased to the Green and Barren River Navigation Company for a term of thirty years. The act of the Kentucky legislature, approved February 20, 1886, ceded the entire system to the United States upon condition that the unexpired portion of the lease to the navigation company be purchased by the United States. The river and harbor act of August 11, 1888, appropriated $135.000 "for the purchase of the improvements known as the Green and Barren river improvements." The deed from the Green and Barren River Navigation Company relinquishing all their rights, privileges, etc., having been duly approved by the Attorney-General of the United States, and the purchase money paid to said company, the Government assumed control of the river, the improvements therein, and the property formerly owned by the State December 11, 1888.

The condition of the improvements and of the rivers at that date was as follows: Lock and Dam No. 1, Green River, required many repairs. The walls of Lock No. 2 were cracked and in bad condition generally, the land wall especially so, it being held in position by anchorage to cribs filled with stone; the river wall had yielded outward. Lock No. 3, Green River, was broken entirely, the river wall having yielded outward and fallen into the river. Lock and Dam No. 4, Green River, was in fairly good condition, with the exception of needed repairs to the quoins and gates. The walls of Lock No. 1, Barren River, were so badly cracked that a part of one of them, the land wall, leaned toward the lock chamber about 6 inches
459 and was liable to fall at any time. The entrances to the locks were obstructed with deposit and the pools with great numbers of snags, overhanging trees, etc.; the appurtenant structures at the locks and the lock-tenders' dwellings were in bad condition and inadequate. No snagging or dredging plant was available.

Excepting the funds for rebuilding Lock No. 2, Green River, which were provided by specific appropriations, the funds for the restoration of former structures, the operation of the locks, and maintenance of the system in good navigable condition have been provided by allotments from the indefinite appropriation for "Operating and care of canals and other works of navigation," act of July 5, 1884, as amended and reenacted by section 6 of the river and harbor act of March 3, 1909, under estimates submitted annually at the beginning of each fiscal year. The first project for work on these rivers under the later act was approved January 4, 1889, and proposed the restoration, so far as practicable, of the former structures to good serviceable condition, the construction of new ones where required, the operation of the locks, the removal of snags, landslides, and deposit from the entrances to the locks, etc., and such has been the general object of each subsequent annual estimate and project.

In addition to the items for the usual work of operation and maintenance, the project and estimate for the fiscal year 1910, provided for installing new upper steel gates and building new upper miter wall at Lock No. 2, Green River; new lower steel gates, repairs to upper river cribs, foot-bridge, and apron of dam at Lock No. 2, Green River; new upper gates of steel and repairs to upper-river crib at

Lock No. 3, Green River; installing new upper steel gates and rebuilding upper miter wall at Lock No. 4, Green River; bank protection and roadway at Lock No. 6, Green River; two new dump scows and rebuilding two derrick boats. The estimate for the year amounted to $88,788.51, which was made available by the allotment of July 17, 1909.

Expenditures during the fiscal year amounted to $75,884.85, not including outstanding liabilities June 30, 1910.

The aggregate of expenditures under the project of January 4, 1889, and subsequent annual projects to June 30, 1910, is $1,559,998.21.

The result of these expenditures is the thorough repair of the several locks of the former system and their appurtenant structures, their maintenance, together with the new locks, and the restoration of through navigation in the pools from Lock No. 1, Green River, to Bowling Green, Ky., on Barren River, a distance of 172 miles, for boats not exceeding 35 feet in width, 138 feet in length, and draft not exceeding 5 feet.

At extreme low water in the open river below Lock No. 1, Green River, there is a depth of only 1 foot on the lower miter sill at that lock, which is located 8 miles above the mouth of the river.

The system now includes 7 locks and dams, Locks Nos. 5 and 6, Green River, having been built from funds provided by specific appropriations, thus affording slack-water navigation from Lock
460 No. 1, Green River, to Bowling Green, Ky., on Barren River, and to Mammoth Cave, Ky., on Green River; the total length of pools is 219 miles.

Following is a synopsis of traffic and commerce through the locks during the fiscal year:

	Boats.	Short tons. Freight.
Green River:		
Lock No. 1	4,059	258,199½
Lock No. 2	2,611	185,353½
Lock No. 3	2,160	112,094
Lock No. 4	2,116	60,785¼
Lock No. 5	1,186	52,400½
Lock No. 6	1,268	27,369½
Barren River, Lock No. 1	1,925	27,188½

A comparative statement of the traffic and commerce on these rivers will be found in the report on this work by the district officer.

References to more extended information may be found in Annual Report of the Chief of Engineers for 1904, page 500.

(See Appendix H H 6.)

7. Operating and care of lock and dam on Rough River, Kentucky.—This lock and dam was built with funds provided in appropriations for improving Rough River, Kentucky, and opened to navigation December 12, 1896. The lock has an available length of 123 feet, width of 27 feet, and depth on upper miter sill at normal pool stage of 6.8 feet. At such stage the pool above the lock affords slack-water navigation 21½ miles to a short distance above Hartford, Ky., for boats with draft not exceeding 4 feet.

The expense of operating the lock was paid from the appropriation for improvement until June 30, 1897; since that date the expenses of operating, care, etc., have been borne by the indefinite appropriation for operating and care of canals and other works of navigation, act of July 5, 1884, as amended and reenacted by section 6 of the river and harbor act of March 3, 1909, the funds being made available by allotment for projects and estimates submitted annually at the beginning of each fiscal year.

The project for the fiscal year 1909 proposed to operate the lock and maintain existing structures in good serviceable condition, keep the pools clear of snags, and remove deposits from the lock and approaches thereto at an estimated cost of $1,508; which amount was made available by allotment July 15, 1909.

Expenditures during the year amounted to $1,304.39, exclusive of outstanding liabilities June 30, 1910.

The amount expended from July 1, 1897, to June 30, 1910, is $12,268.19.

Traffic through the lock during the past fiscal year included 783 boats and rafts, carrying 23,439½ short tons of freight.

A comparative statement of traffic and commerce on this river during the past nineteen years will be found in the report on this work by the district officer.

(See Appendix H H 7.)

461 Examinations Made in Compliance with River and Harbor Act Approved March 3, 1909.

Reports on preliminary examinations required by the river and harbor act of March 3, 1909, of the following localities within this district were duly submitted by the district officer. They were reviewed by the Board of Engineers for Rivers and Harbors, pursuant to law, and were transmitted to Congress and printed in documents as indicated:

1. Preliminary examination of Wabash River, Indiana and Illinois from its mouth to Mount Carmel.—Report dated June 12, 1909, is printed in House Document No. 246, Sixty-first Congress, second session. It is not considered advisable to undertake the improvement of Wabash River by the United States at the present time.

2. Preliminary examination of Tradewater River, Kentucky.—Report dated June 12, 1909, is printed in House Document No. 346, Sixty-first Congress, second session. The locality is not considered worthy of improvement by the General Government at the present time.

* * * * * * *

APPENDIX H H.

Improvement of Rivers and Harbors in the Louisville, Kentucky, District.

Report of Capt. Lytle Brown, Corps of Engineers, Officer in Charge, for the Fiscal Year Ending June 30, 1910.

Improvements.

1. Falls of Ohio River at Louisville, Kentucky.
2. Operating and care of Louisville and Portland Canal, Kentucky.
3. Operating and care of lock and dam at Grand Rapids, Wabash River.
4. Green River above the mouth of Big Barren River, Kentucky.
5. Operating and care of locks and dams on Green and Barren rivers, Kentucky.
6. Operating and care of lock and dam on Rough River, Kentucky.

UNITED STATES ENGINEER OFFICE,
LOUISVILLE, KY., July 16, 1910.

SIR: I have the honor to transmit herewith annual reports of the works under my charge at the close of the fiscal year ending June 30, 1910.

Very respectfully, your obedient servant,
LYTLE BROWN,
Captain, Corps of Engineers.

The Chief of Engineers, U. S. Army.

462

H. H. 1.

Improvement of Falls of Ohio River at Louisville, Kentucky.

A condensed description of the original condition, outline of projects, etc., will be found on page 719 of this report; references to other reports, etc., will be found on page 488, Annual Report of the Chief of Engineers for 1904.

Following is a general description of the operations during the fiscal year:

Boulé Dam, Sections Nos. 6, 7, 8, and 9.

At the close of the fiscal year 1909 there remained to be done the following piers and sections for completing the dam at the head of Falls of Ohio River:

Pier No. 5, concrete, 16 feet 3 inches wide, partly constructed in 1908; 68.1 cubic yards concrete remained to be placed on east end of pier.

Section No. 6, Boulé dam, 188 feet long.
Pier No. 6, concrete, 15.96 feet wide.
Section No. 6A, Boulé dam, 196 feet long.
Pier No. 6A, concrete, 16 feet 3 inches wide.
Section No. 7, Boulé dam, 196 feet long.
Section No. 8, Boulé dam, 152 feet long.

Work was resumed on July 20 and continued through the season.

From July 22 to 27 built and set cribs for temporary dam in front of sections Nos. 7 and 8; commenced sheat-ing cribs July 27, completing the same on the 29th. Stone used for weighting down cribs was loaded on barges at concrete dam section No. 11 and at north canal wall station No. 89 and towed to cribs.

Holes 20 inches deep were drilled behind cribs, and pins placed in same for holding cribs in place. From August 1 to 9 and 17 to 23 work was practically suspended on account of a rising river. During the remainder of August cofferdams were made, boiler and engine set up for pump, telephone line rebuilt, and on August 10 began pumping water from cofferdam.

On August 13 connected 99 feet of 5-inch and 66 feet of 2½-inch pipe from drill boats to steam drills, and commenced drilling for foundation, continuing to August 16, inclusive.

About 75 feet of cofferdam in front of section 8 was washed out by high water; this was rebuilt August 24 and pumps again started. Drilling and blasting was resumed on August 25 and continued to August 31, when all of the disrupted rock was removed from foundation. On August 28 began setting sills and drilling for hold-down bolts and braces, section No. 8; the drilling was completed September 1. On September 2 began concreting sills, and completed same September 7. September 8 and 9 transferred trestles from canal wall and placed them in position, thus completing section No. 8.

September 8 began blasting for foundation of section No. 7; September 20 commenced drilling for hold-down bolts for sills. Steel trestles were transferred from canal bank, and all were set in place by October 3.

463 Sections Nos. 6 and 6A.

Section No. 6.—Temporary dam was built during September. Began blasting for foundation October 11, setting sills October 22, and completed same October 25. Trestles were all set in place by October 28.

Section No. 6A.—Completed blasting rock for foundation October 8, drilling and setting sills October 13, concreting sills October 15, and setting up trestles October 18.

Pier No. 4.—October 29 began building dam for enlarging pier No. 4, extending it up the river 30 feet and 6 feet in width, in order to place signal tower on it. Concrete forms for pier were completed November 8 and concreting commenced; the pier was completed November 11. Built form for signal tower on pier No. 4 and commenced concreting November 13, and completed same November 17. The tower was reenforced with 8 steel rails 26 feet long.

Following is a summary of work done on pier No. 4:

Cribbing placed around pier	linear feet	240
Sheathing placed on cribs	do	432
Rock placed in cribs	cubic yards	30
Earth placed in temporary dam	do	110
Forms placed for pier	linear feet	93.3
Concrete placed in pier	cubic yards	176.66
Concrete placed in signal tower on pier No. 4	do	42.99

The canal-shop forces made repairs to drill boats, skiffs, and barges, as required; completed gasoline launch on July 30; made side rods for steam drills; hauled sawdust and manure from stable to lock-basin wall, where it was loaded on barges and towed to works for stopping leaks in temporary dam. Set up telephone poles from Fourteenth street to site of work; repaired wheel and furnace on steamer Wave Rock; made loading sticks and plugs for drillers' use; made tie chains for operating dam; repaired old docked hull of steamer Shawnee; made new wheel for steamer Emerald; and repaired buoy at Wave Rock dike; dismantled two compressor scows; transferred machinery to power house, where it was cleaned and stored; removed loose rock and gravel from foundation of section No. 5; placed five anchor bolts, with wooden buoys attached, in ledge at bottom of river east of new dam; placed ring bolts in pier No. 5, and made and put up iron ladders on signal towers.

The following is a summary of work accomplished:

Cribbing built and placed	linear feet		1,070
Temporary dam covered with sheathing	do		790
Stone placed in cribs	cubic yards		127.2
Holes, 20 inches deep, drilled behind cribbing and iron pins placed in same	number		32
Sand sacked and placed in cofferdam	cubic yards		388.43
Earth used in temporary dam	do		489.2
Trestles placed in dam	number		209
Drills operated	do	2 to 13	
Holes drilled	do		5,124
Holes drilled	linear feet		13,318.33
Blasts made	number		277
464 Holes fired	do		2,262
Holes fired	linear feet		6,335.5
Dynamite used:			
75 per cent	pounds	1,156.5	
60 per cent	do	435	
			1,591.5
Exploders used:	number	770	
6-foot	do	1,302	
8-foot	do	279	
12-foot			2,351
Rock disrupted and removed	cubic yards		823.4
Upstream sills set in place	linear feet		738
Downstream sills set in place	do		738
Manure used in stopping leaks	cubic yards		75
Concrete placed in:			
Pier No. 5	do		74.9
Tower on pier No. 4	do		40
Sills section No. 6A	do		88.5
Foundation section No. 6A	do		103.5
Pier No. 6	do		265.5

Pier No. 6A	do		228.1
Section No. 6	do		98
Foundation section No. 6	do		115.83
Foundation section No. 7	cubic yards		100.95
Sills section No. 7	do		85.40
Sills section No. 8	do		80.7
Foundation section No. 8	do		91.2
Anchor cribs blown up with dynamite:			
Blasts	number		4
Exploders used, 8 feet long	do		38
Dynamite used:			
60 per cent	pounds	80	
75 per cent	do	80	
			160
Rock taken from east of former cross dam and from north canal wall and placed in pier No. 9	cubic yards		650

Expended, Sections Nos. 6, 7, 8, and 9.

Foundation.

Labor:	To June 30, 1909.	To June 30, 1910.	Total.
Drilling and blasting for anchor bolts	$223.27	$2,531.23	$2,754.50
Repairs to drills	490.11	568.68	1,058.79
Handling and unloading cement	151.02	66.84	217.86
Connecting and removing pipes	188.23	.....	188.23
Testing cement	39.82	.....	39.82
Placing pumps, operating pump and cable way	1,220.15	1,995.78	3,215.93
Removing disrupted rock	87.02	1,991.58	2,078.60
Removing old dam	54.28	.....	54.28
Making hold-down bolts	21.15	.....	21.15
Cutting pipe, etc	13.54	159.01	172.55
Total labor	2,488.59	7,313.12	9,801.71
Material:			
Drill parts, pipe, hose, etc	1,251.92	576.56	1,828.48
Forks, shovels, steel, etc	80.94	.....	80.94
Exploders and dynamite	216.75	304.50	521.25
Rope, buckets, and mule hire	170.87	.....	170.87
Cement	1,304.00	.....	1,304.00
Sand and gravel	707.06	105.60	812.66
Repairs parts Kitson lamps	163.83	.....	163.83
Lead wire	28.96	.....	28.96
Total material	3,924.33	986.66	4,910.99

Sills.

Labor:			
Blacksmith and machinist work	292.92	96.80	389.72
Blacksmith and machinist work on angle-iron bolts	15.35	.....	15.35
Dressing, framing, storing, and placing	80.81	685.12	765.93
Concreting, making forms, and removing	272.21	2,437.96	2,710.17
Excavating for sills	.....	76.88	76.88
Drilling for hold-down bolts	118.37	473.00	591.37
Total labor	779.66	3,769.76	4,549.42

Material:			
Lumber for sills and forms	688.01	113.46	801.47
Iron for bolts	627.79	.....	627.79
Platforms for concrete	44.94	.....	44.94
Angle irons	466.62	.....	466.62
Sand and gravel	.....	310.73	310.73
Total material	1,827.36	424.19	2,251.55
Temporary Dam.			
Labor:			
Framing and handling material	2,958.83	492.78	3,451.61
Breaking rock for cribs	645.96	.....	645.96
Making drift bolts	8.64	.....	8.64
Anchor bolts for boats	202.80	.....	202.80
Building and repairing dam	2,505.94	5,672.50	8,178.44
Removing dam and storing lumber	439.15	509.15	948.30
Steamers Wave Rock and Willow Point	2,233.90	.....	2,233.90
Steamers Wave Rock and Emerald	.....	2,419.64	2,419.64
Miscellaneous, watching, etc	134.49	4.13	138.62
Removing cofferdam	30.51	.....	30.51
Repairing cofferdam	737.36	.....	737.36
Repairing Blake pump	24.65	6.03	30.68
Total labor	9,922.23	9,104.23	19,026.46
	To June 30, 1909.	To June 30, 1910.	Total.
Material:			
Lumber	$3,806.02	$1,671.36	$5,477.38
Sand	.....	71.29	71.29
Drift bolts, spikes, nails, sacks, etc	673.75	857.68	1,531.43
Rope, boots, canvas, oil, and ice	2,287.37	.....	2,287.37
Boiler tubes, Wave Rock and dredge Casey	109.02	.....	109.02
Oars	44.25	.....	44.25
Total material	6,920.41	2,600.33	9,520.74
Piers.			
Labor:			
Making ring bolts for piers	31.90	60.06	91.96
Setting up mixer, etc	39.61	.....	39.61
Building, placing and removing forms	981.07	304.98	1,286.05
Drilling behind forms	150.54	.....	150.54
Concreting	2,420.53	924.33	3,344.86
Locating and building towers	.....	1,171.74	1,171.74
Making angle-iron bolts and setting angles	28.08	75.55	103.63
Filling stone in piers	25.20	206.39	231.59
Total labor	3,676.93	2,743.05	6,419.98
466 **Material:**			
Cement	1,005.10	19.50	1,024.60
Iron for ring bolts	11.97	.....	11.97
Nails and lumber for forms	106.66	.....	106.66
Lumber	205.03	244.00	449.03
4 I-beams	22.37	14.77	37.14
Sand and gravel	.....	400.03	400.03
Total material	1,351.13	678.30	2,029.43

Trestles.

Labor:

Handling and placing	130.38	535.50	665.88
Inspecting and handling	365.28	.....	365.28
Total labor	495.66	535.50	1,031.16

Material:

231 trestles	17,474.00	.....	17,474.00
474 deck-frame bolts	27.30	.....	27.30
246 deck frames	1,187.53	.....	1,187.53
Traveling expenses	17.78	.....	17.78
Total material	18,706.61	.....	18,706.61

Trestle Boxes.

Labor:

Handling, inspecting, and placing	33.10	6.95	40.05

Material:

479 trestle boxes	1,751.19	.....	1,751.19
1,125 hold-down bolts	465.89	.....	465.89
1,134 washers	15.67	.....	15.67
499 trestle-box pins	177.35	.....	177.35
Total material	2,410.10	.....	2,410.10

Derricks.

Labor, framing	3.75	.....	3.75
Material, lumber	165.32	.....	165.32

Wickets.

Labor:

Carpenter, blacksmith, and machinist work	892.66	.....	892.66
Handling and placing	.....	97.32	97.32
Making lock bars for wickets	.....	44.30	44.30
Total labor	892.66	141.62	1,034.28

Material:

Lumber	719.81	.....	719.81
Angle-iron rivets, washers	369.20	.....	369.20
Iron for handles	148.14	.....	148.14
Total material	1,237.15	.....	1,237.15

467 Railroad.

	To June 30, 1909.	To June 30, 1910.	Total.
Labor:			
Framing timber for piers	$871.15	.....	$871.15
Laying tracks	410.14	.....	410.14
Loading coal on boats	27.20	.....	27.20
Removing tracks, etc.	59.13	.....	59.13
Total labor	1,367.62	.....	1,367.62
Material:			
Lumber	1,572.24	.....	1,572.24
Spikes and nails	75.20	.....	75.20
Wire rope	218.24	.....	218.24
Total material	1,865.68	.....	1,865.68
Skiffs.			
Labor:			
Building	114.64	.....	114.64
Material:			
Lumber, oars, Nails, etc.	159.61	.....	159.61
Telephone.			
Labor:			
Setting up and removing lines	183.69	173.19	356.88
Material:			
Wire and insulators	19.37	4.24	23.61
Miscellaneous.			
2 new barges	1,637.53	.....	1,637.53
Watching, etc.	901.46	718.53	1,619.99
Lowering and raising dams	286.58	343.52	630.10
Repairs to boats and plant	7,587.07	1,821.85	9,408.92
Telephone rent	164.25	24.00	188.25
Office force	2,024.91	1,356.64	3,381.55
Coal, miscellaneous supplies, etc.	3,969.08	3,383.56	7,352.64
Surveying	568.15	627.54	1,195.69
Skiffmen	296.38	37.06	333.44
Tubing for operating wickets	12.96	.....	12.96
Lock bars	262.64	.....	262.64
Ram for use on wickets	54.47	.....	54.47
New gasoline launch	295.74	281.70	577.44
Compensation to injured employees	.....	483.12	483.12
Testing cement	.....	8.36	8.36
Storing material	.....	981.46	981.46
Making chains for dam	.....	37.64	37.64
Ring bolts for buoys	.....	113.95	113.95
Ladders for towers	.....	25.17	25.17
Cement	.....	1,813.30	1,813.30
Total	18,061.22	12,057.40	30,118.62

468 Miscellaneous Expenditures After Dam was Completed.

Repairs to boats and plant	.....	186.42	186.42
Making hooks, clevises, and fastening wickets together	.....	374.32	374.32
Repairing wickets and trestles damaged by ice	.....	100.33	100.33
Dam tenders	.....	473.29	473.29
Miscellaneous supplies, telephone rent, etc.	.....	200.60	200.60
Two maneuvering boats	.....	325.99	325.99
8 buoys	.....	259.57	259.57
Dismantling drill scows and storing machinery	.....	326.53	326.53
Total	.....	2,247.05	2,247.05

Expended on Sections 6, 6A, 7, 8, and 9, Fiscal Year 1910.

Labor	$31,829.56	
Material	8,708.98	
		$40,538.54
Expended prior to June 30, 1909		76,606.82
Total cost sections 6, 6A, 7, 8, and 9		117,145.36
Expended since dam was completed		2,247.05
Total expenditures to June 30, 1910		119,392.41

Section No. 10, Chanoine Dam.

The amount expended for this section was for the purchase of lumber and making needles for Chanoine dam.

Labor	$3.28
Material	83.53
Total	86.81

Removal of Disrupted Rock.

Dredge Louisville worked one crew from November 8 to 30; two crews May 12, 13, and 14; and one crew on June 10, dredging disrupted rock, removing 2,420 cubic yards, scow measure, or 1,210 cubic yards, place measure; also 675 cubic yards mud and gravel, scow measure.

Dredge Casey worked two crews from November 22 to December 19; May 7 to 14 and 20 to 27; June 1 to 10; and one crew on June 11 and 24, dredging disrupted rock, removing 1,590 cubic yards, scow measure, or 795 cubic yards, place measure; also 2,615 cubic yards mud and gravel, scow measure.

On June 24 the work of removing disrupted rock was completed. Following is summary of work done:

Blasts made	number	11
Holes blasted in disrupted rock too large for dippers (linear feet 22), number		23
Exploders used, 20 6-foot and 4 8-foot	number	24
Dynamite used, 60 per cent	pounds	19½
Rock removed (place measure)	cubic yards	2,005
Mud and gravel removed (scow measure)	do	3,290

469 Expenditures were as follows:

Labor:		
Dredging	$2,572.37	
Blasting large rock	22.78	
Coaling boats	184.81	
Dragging for loose rock	66.37	
		$2,846.33
Material: Dynamite		48.00
Total expenditures		2,894.33

The description of operations, etc., in this report is taken from the report of Assistant Engineer John H. Casey, who has had local supervision of the work throughout the year.

Estimate of Additional Funds Required.

Amount required for expenditure in fiscal year ending June 30, 1912, for works of improvement	*a* $500,000

Submitted in compliance with requirements of sundry civil act of June 4, 1897.

Appropriations.

Enlargement at head of canal and of basin at lock:		
July 5, 1884	$300,000.00	
August 5, 1886	150,000.00	
August 11, 1888	150,000.00	
September 19, 1890	60,000.00	
July 13, 1892	60,000.00	
August 18, 1894	60,000.00	
		$780,000.00
Allotments for Indiana Chute from appropriations for improving Ohio River:		
July 14, 1880	$10,000.00	
March 3, 1881	50,000.00	
August 2, 1882	35,000.00	
July 5, 1884	10,000.00	
August 5, 1886	20,000.00	
August 11, 1888	15,000.00	
		140,000.00
Appropriations for work on Indiana Chute:		
September 19, 1890	$25,000.00	
July 13, 1892	35,000.00	
August 18, 1894	20,000.00	
		80,000.00
Net allotment from appropriation for maintenance of river and harbor improvements, act of April 28, 1904		14,545.06
Net allotment from appropriation for improving Ohio River, general improvement, act of March 3, 1905		5,353.80
Appropriations for improving Falls of Ohio River and Indiana Chute, Falls of Ohio River:		
June 3, 1896	$10,000.00	
June 4, 1897	350,000.00	
July 1, 1898	152,250.00	
March 3, 1899	15,000.00	
June 13, 1902	41,000.00	
March 3, 1905	80,000.00	
March 2, 1907	314,000.00	
		962,250.00
October 17, 1906, sale of property		350.00
Total		1,982,498.86

a Exclusive of the balance unexpended July 1, 1910.

470

HH2.

Operating and Care of Louisville and Portland Canal, Kentucky.

Description of original condition and references to former reports, documents, etc., will be found on page 491, Annual Report of the Chief of Engineers for 1904.

The project and estimate for the fiscal year ending June 30, 1910, approved July 14 and August 16, 1909, provided as follows:

It is proposed to operate the canal and locks and to make such repairs as may from time to time become necessary to maintain them in good navigable condition; to operate the dredging outfit as needed in clearing the canal and locks of deposit brought into them by high water; to make such repairs to the towboats, dredges, buildings, walls, slopes, pavements, roadways, bridges, fences, and other government property as are necessary to maintain them in good serviceable condition; to repair guard gate abutments; and replace the old stable with a new one.

The estimate for the year is summarized as follows:

Regular force	$61,404
Repairs	13,550
New stable *a*	8,000
Miscellaneous supplies and contingencies	16,500
Total	99,454

Under the foregoing project and estimate, the operations during the fiscal year, in addition to the usual work of passing traffic, operating the movable dams, and ordinary current repairs incident to care and preservation, were as follows:

The canal was open to navigation three hundred and twenty-eight days and closed thirty-seven days on account of high water. There was no traffic through the canal on account of ice from December 22 to 28, inclusive, and January 1 to 10, inclusive.

The highest stage of water occurred January 18, the upper guage reading 27.3 feet and the lower gauge 53.8 feet; the lowest stage occurred October 18, the upper gauge reading 2.4 feet and the lower gauge 3.8 feet. The dams at head of canal were raised and lowered as follows:

a Only $5,000 of this item was allotted, to be applied toward building a part of the proposed stable, with a view of providing the remainder subsequently.

471

	Raised.	Lowered.
Section No. 2...	January 31 to February 3..	January 7 and 8.
	March 15 to 17.....	February 19 and 20.
	June 14 to 18.....	June 11 and 12.
Section No. 3...	February 4 and 5.....	February 18.
Section No. 5...	November 11 and 12.....	December 23 and 24.
	February 10 to 16, raised 136 feet	Lowered except about 80 feet at south end.
	March 23 to 26.....	December 27 and 31 tried to lower the 80 feet but could not on account foundation being filled with stone and ice.
		January 3 to 6 lowered 48 feet of the 80 feet, leaving 32 feet standing, which could not be lowered on account of ice.
		February 17 lowered about 50 feet.
Section No. 6...	March 24 to 26.....	December 13 and 14.
Section No. 7...	November 13	do.
Section No. 8...	December 1 and 2.....	December 7 and 8.
Section No. 9...	November 17	
	December 1 and 2.....	do.
Section No. 10..	April 8 to 16, 616 feet.....	April 16 296 feet.
	May 9 and 10, 24 feet.....	April 19, 320 feet.
	May 26, 26 feet.....	May 11, 24 feet.
	June 2 to 7, 348 feet.....	May 27, 26 feet.
		June 8, 348 feet.

The automatic gate was lowered 162¼ hours during the year. The lock force operated lock gates, cut grass from slopes, set up new iron fence around canal office, removed old telephone poles from east of Twenty-eighth Street Bridge, painted door and window frames and inside walls of lock engine houses. Grouted seams in coping of north and south piers at guard gates and parapets at both ends of Twenty-eighth Street Bridge; grouted and pointed seams in lock walls and steps.

Towboats and Dredges.

Steamer Cherokee.—Towed scows for dredges in canal, and barges, etc., for work at head of canal, working two crews from January 29 to June 30. Was laid up on account of repairs forty-one days; on account of ice and high water eight days; on account of crew sand blasting and cleaning hull of dredge Louisville and repairs to dredges and caring for floating plant eleven days; and on account crew working on dams five days.

Steamer Wave Rock.—Worked from July 21 to December 19 towing barges, etc., for work at head of canal. Was laid up one day on account of repairs to furnace and wheel.

Steamer Emerald.—Worked from August 31 to December 19 towing barges, etc., for work at head of canal. On April 26 and 27 worked in place of steamer Cherokee towing scows for dredges.

Dredge Louisville.—Was engaged from July 1 to June 30 removing mud from canal, lock chambers, and below locks, and Byrne & Speed basin. From January 29 to June 30 worked two crews, and from July 1 to January 28 one crew. Quantity of mud removed

from canal, lock chambers, and below locks 78,610 cubic yards; from Byrne & Speed basin during November and May, 3,400 cubic yards. Was laid up on account of repairs seventy-eight days; ice and highwater, fifty-one days; raising dams, twelve days; and inspecting boilers, two days.

Dredge Wabash.—Worked in canal between stations 3 and 119 from August 25 to September 2, September 8 to 20, and September 30 to October 18 removing 12,620 cubic yards mud, scow measure.

From September 21 to 29 dredged in front of city wharf be-
472 tween Fifth and Sixth streets removing 3,950 cubic yards mud, scow measure. The expense of this latter dredging was borne by the city of Louisville and paid for in March, 1910. The balance of the time the dredge was out of commission and laid up in lock basin.

Dredge Casey.—From July 21 to November 30 was employed at head of canal working on the new dam. From July 1 to 21, December 20, and January 22 to June 30 worked two crews in canal in lock chambers and below locks removing 91,525 cubic yards mud and 5 cubic yards rock, scow measure, 2,595 cubic yards of which was removed from in front of city wharf log. On May 3 and 4 dredged in Byrne & Speed basin removing 1,150 cubic yards mud, scow measure, the expense of which was borne by the Byrne & Speed Coal Company. Was laid up on account of repairs nine days; ice and high water, thirty-six days; testing boiler, two days; and raising sunken scow, two days.

Expenditures, regular force..... $38,857.70

Repairs.

Steamer Cherokee.—Was placed on dry dock November 17, and remained there to December 14, during which time the following repairs were made:

Repaired planking, old floor timbers, machinery, cylinder packing, fantail, steam drum, breeching, rudder irons, and capstan engine. Replaced sides, knuckles, and stem, and put on new nosing around head and for 50 feet aft on each side; rebuilt furnace, reset capstan bed, replaced sheet iron on hull and painted hull to water line. Made new stacks for auxiliary boiler.

Steamer Wave Rock.—Repaired furnace, injectors, capstan bars, joints on steam pipes, throttle valve, stack knees, and made new swinging fenders.

Steamer Emerald.—Repaired roof.

Dredge Louisville.—Was placed on dry dock August 24, remaining on to October 9, while the following repairs were being made:

Forward spud casing on starboard side near water line was repaired by putting in new plates and angles; patches from 1 to 10 feet square were placed on the four corners of hull below water line; and all loose and worn-out rivets, mostly in the knuckle, were removed and new ones put in. All worn or defective parts of main engine were either replaced or repaired; the cylinders were bored out and new piston heads, rods, and packing made; a new main

shaft (cast steel) was turned, and drivers, eccentrics, etc., fitted to same; engine frame repaired where cracked, and new pillow blocks put in place. New cast-steel pinions and sprocket wheels were purchased for main driver, spuds, endless chain, etc., and turned, bored, and keyseated. The inside of hull was cleaned and painted, and the inside and outside of cabin painted. Minor repairs were made from time to time during the year as required.

Dredge Casey.—The following repairs were made during the year:

473 Made and erected new steel mast; repaired capstan engine and boiler, cross-head brasses on engines, and fitted up sheaves for wire line. Repaired pitman brasses for capstan engine and journal for drum shaft; made fenders for spud housings; calked steam dome on boiler; repaired hoisting engine; made new spuds; and painted inside and outside of cabin.

Dredge Wabash.—Repaired spud friction, dipper handle and dipper, dressed and framed new spud. June 4 was placed on dry dock and her hull repaired and calked.

Canal shops, etc.—Repairs were made as required to scows Nos. 6, 7, 8, 11, 12, 13, and 14; patched deck and painted old hull of Shawnee; rebuilt chimneys on office and residence; repaired floors in machine shop and sawmill, jacks on Eighteenth Street Bridge; replaced worn-out wicket in middle gate of locks with new one; repaired and calked pump boat; painted roofs of residence and office; also painted Twenty-eight- Street Bridge, and commenced work of cleaning Eighteenth Street Bridge preparatory to painting.

New blocks were made to replace old ones in dry dock; at Eighteenth Street Bridge re-covered roof of stable and cottage, put new floor in kitchen, repaired back porch with new supports and floor.

Repaired and painted surrey; docked derrick boat and patched bottom. Repaired trestle and derrick at coal bin by replacing old timbers with new ones; repaired boiler furnace in machine shop and furnace in brass foundry; and made repairs to fences, buildings, etc., as required.

Expended:	
Labor	$8,618.51
Material	3,288.78
Total	11,907.29

Extra Labor.

Installed new lathe in machine shop and removed old one; removed cabin and bulkheads from old hull of steamer Shawnee; installed boiler in mill engine room in place of one that was removed on account of leaking; cut grass and weeds from slopes between Ninth and Twenty-eighth streets; trimmed hedge, cleaned out dry dock, framing shed, and shipyard from time to time. Recharged fire extinguishers; made trestles and drawing boards for district engineer office; cleaned and washed walls and revetments after each high water; whitewashed inside walls of blacksmith shop; cleaned hulls of scows and barges; unloaded coal from four barges into coal

bin; cleaned rock, etc., from foundation of Boulé dam; made two iron ladders and placed them on signal-light towers; converted condemned boiler into oil tank; watched and cared for floating plant, and coaled locks, shops, and boats.

Expended $8,718.32

474 Miscellaneous, Supplies, etc.

Expenditures under this heading were for necessary supplies for ues in shops, on dredges and towboats, and for fuel for boats, locks, shops, etc., and amounted to $9,680.74.

Dry Dock.

During the year the dry dock was used by 10 private boats fifty-four days and seventeen hours, for which $597.10 was collected.

It was used for docking 25 government boats one hundred and seventy days and nine hours.

Ice Gorge at Wolf Creek.

On January 18 property was transferred from canal locks to Tenth and Kentucky street depot, and 1 foreman and 48 laborers left for Stephensport, Ky., for the purpose of removing an ice gorge in the Ohio River at Wolf Creek. The gorge let go on the morning of the 18th, and the men proceeded to Henderson, Ky., as it was feared the gorge would again form at the bridge piers at that place, but as it passed safely the party returned January 19, 10.30 p. m. and the property was returned to the canal the next day.

Work Done for Green and Barren Rivers.

New steamer Shawnee.—The hull of this boat was launched June 15, 1909, and practically completed, with the exception of transferring and setting up machinery from the old hull. This work was done and the boat completed during July. On July 28 a trial trip was made. Outfit and equipment were transferred from steamer Emerald to the new boat, and she left for Green River, 11.30 a. m., July 31, 1909.

Cost of new steamer Shawnee:

	Labor.	Material.	Total.
Expended during fiscal year 1909.....	$4,530.62	$2,143.69	$6,674.31
Expended during fiscal year 1910.....	1,596.31	190.59	1,786.90
Total.....	6,126.93	2,334.28	8,461.21

New dump scows.—Two new dump scows, 70 feet by 21 feet by 5 feet 6½ inches, were built at the canal for use on Green River. February 16 began framing timbers for the two scows; March 22 commenced to assemble timbers for one scow; April 30 the first scow was launched, and completed May 2. The second scow was

completed June 4. Steamer Cherokee left June 6, 9.15 a. m., in tow with the two new scows, for Lock No. 1, Green River; returned June 9, 5.15 p. m.

Cost of new scows:

Labor	$3,068.13
Material	3,680.46
Towing scows to Green River	117.41
	6,866.00

475 The canal shop forces fitted up valves and suckers for pumps, bored and keyseated steel pinion for use on Green River, and repaired steamer Emerald.

Labor, repairing steamer Emerald	$12.41
Labor, boring and keyseating pinion	3.12
Labor, work on barge pumps	6.00
Ice furnished Shawnee, trip to Green River	1.00
	22.53

Ohio River Survey.

The amount expended for this work was for making drawing boards, trestles, and benches; repairing barge pumps; watching and caring for boats; dismantling drill boats and storing machinery and property in canal warehouse and old blacksmith shop at canal; repairing roof of building in which the property was stored; building platform in warehouse for storing property on; and for labor and supplies furnished steamer Cherokee in towing survey boats from Cincinnati, Ohio, to canal locks.

Expended.

	Labor.	Material, etc.	Total.
Storing property, etc.	$323.67	.....	$323.67
Repairing barge pump	1.56	.....	1.56
Steamer Cherokee trip to Cincinnati	130.68	.....	130.68
Surveyor's time in engineer office	60.00	.....	60.00
Work on drawing boards, trestles, etc.	93.75	.....	93.75
Watching and caring for fleet	371.29	.....	371.29
Laundry work done for boats	.....	$74.28	74.28
Lumber for drawing boards	.....	99.73	99.73
Fuel and provisions steamer Cherokee	.....	91.77	91.77
Roofing blacksmith shop	.....	57.79	57.79
Total	980.95	323.57	1,304.52

The description of operations, etc., in this report is taken from the report of Assistant Engineer John H. Casey, who has had local supervision of the work throughout the year.

Summary of Expenditures on Account of Operating and Care of Louisville and Portland Canal, Fiscal Year 1910, Showing general Items and amount Expended under each Heading.

Item.	Amount.
Services	$60,567.60
Supplies	8,457.81
Materials	5,515.81
Miscellaneous	553.66
Total	75,094.88

Collections.

1909.		
Aug. 2.	O'Neil Coal and Coke Company, use of dry dock	$46.67
Sept. 4.	Kentucky and Indiana Bridge and Railroad Company, rent of land	250.00
Oct. 3.	Speed Elevator Company, rent of land	125.00
Oct. 27.	Kentucky River Transportation Company, use of dry dock	158.75
Nov. 3.	P. C. Donaldson, use of dry dock	27.50
476 Nov. 9.	Byrne & Speed Coal Company, use of dredging plant	120.00
Dec. 22.	O'Donnell & Co., rent of land	50.00
1910.		
Jan. 3.	Louisville Cement Company, rent of land	30.00
Jan. 5.	Nugent Sand Company, use of dry dock	135.00
Jan. 12.	L. Hammerschmidt, use of dry dock	45.42
Jan. 14.	Union Cement and Lime Company, rent of land	5.00
Feb. 7.	Kentucky and Indiana Bridge and Railroad Company, rent of land	10.00
Mar. 1.	E. T. Slider, use of dry dock	92.50
Mar. 19.	City of Louisville, Ky., use of dredging plant	270.00
Mar. 26.	Speed Elevator Company, rent of land	125.00
May 10.	Nugent Sand Company, use of dry dock	25.42
May 14.	Bryne & Speed Coal Company, use of dredging plant	97.50
May 19.	E. T. Slider, use of dry dock	37.92
June 1.	Monongahela River Consolidated Coal and Coke Company, use of dry dock	27.92
Total		1,679.60

All of the above collections were deposited to the credit of the Treasurer of the United States.

Appropriations and Allotments.

Appropriations.

Act of March 3, 1881	$40,562.91

Allotments.

[From act of March 3, 1881.]			
Fiscal year 1882	$54,105.66	July 15, 1898	62,061.71
Fiscal year 1883	61,333.14	July 19, 1899	78,422.89
Fiscal year 1884	53,189.18	July 18, 1900	78,590.05
Fiscal year 1885	4,872.02	July 17, 1901	108,550.20
		July 30, 1902	118,732.34
[From act of July 5, 1884.]		July 24, 1903	43,484.66
		July 15, 1904	92,385.46
		July 20, 1905	76,748.41
—, 1884	67,496.56	September 9, 1905	25,000.00
August 3, 1885	91,840.00	March 10, 1906	10,200.00
July 28, 1886	82,320.00	July 13, 1906	108,567.53
July 2, 1887	77,805.00	July 18, 1907	102,645.79
July 13, 1888	99,456.79	July 15, 1908	91,222.68
July 20, 1889	93,744.00	July 14, 1909 *a*	75,042.56
July 19, 1890	55,548.88	August 16, 1909 *a*	5,000.00
			2,538,945.30

a Act of March 3, 1909.

July 17, 1891	78,769.38	[Transfer settlement.]	
July 20, 1892	102,175.94	July 29, 1909	14.31
July 13, 1893	77,158.68		
September 9, 1893	2,000.00	[Collection.]	
July 11, 1894	114,528.08		
November 27, 1894	1,500.00	May 19, 1910, for contract prints	1.00
July 11, 1895	112,838.28		
July 28, 1896	123,715.05		
July 23, 1897	67,311.47	Total	2,538,960.61

477 Commercial Statistics.

Statements of Traffic and Commerce Through the Louisville and Portland Canal and Through the Open-river Channel over the Falls of the Ohio River at Louisville, Ky., from July 1, 1909, to June 30, 1910.

Traffic.

Kind of craft.	Canal.		Open-river channel.		Total.	
	Number.	Tonnage.	Number.	Tonnage.	Number.	Tonnage.
Passenger boats	358	98,312	91	28,025	449	126,337
Towboats	948	87,241	335	47,492	1,283	134,733
Government boats	188	15,417	20	2,002	208	17,419
Coal barges	1,528	448,558	449	131,612	1,977	580,170
Other barges	806	135,232	168	50,972	974	186,204
Small craft	501	1,048	12	57	513	1,105
Total	4,329	785,808	1,075	260,160	5,404	1,045,968
Lockages, fiscal year	.....	1,864	.....	.....	.....	.....

Commerce.

Articles.	Canal.	Open-river channel.	Total.
	Tons.	*Tons.*	*Tons.*
Coal	593,293¾	289,429	884,722¾
Corn	1,174	91¾	1,265¾
Wheat	1,198¼	48	2,037¼
Salt	13,741	76¾	13,817¾
Oil	619	118½	737½
Whisky	994¾	154½	1,149¼
Flour	191½	13	204½
Sugar	248¾	83¾	332½
Molasses	1,033¼	620½	1,653¾
Cement	490½	128¼	618¾
Tobacco	1,647¾	347¼	1,995
Cotton	48¼	17¾	66
Hay	5,013	389½	5,402½
Straw	2,199¾	244	2,443¾
Cattle	737½	113½	851
Swine and sheep	1,485	153½	1,638½
Horses and mules	175¾	27½	203½
Lumber	19,542½	8,213½	27,756
Staves and shingles	2,291¼	2¼	2,293½
Steel rails	75	.....	75
Manufactured iron	11,081	5,716	16,797
Brick	.....	4,683	4,683
Produce	1,976½	5¼	1,981¾
Miscellaneous	37,284	31,313	68,597
Total	699,333	341,990	1,041,323
Passengers .....number..	8,824	1,625	10,449

478 *Comparative Statement of Traffic and Commerce—Louisville, Ky.*

Traffic.

Fiscal year.	Louisville and Portland Canal.					Open river.					Aggregate.
	Passenger boats.	Tow boats.	Coal boats and barges.	Miscellaneous.	Total.	Passenger boats.	Tow boats.	Cool boats and barges.	Miscellaneous.	Total.	
	No.	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*
1895....	637	513	2,121	353	3,624	101	227	577	3	908	4,532
1896....	635	771	2,975	184	4,565	128	274	641	2	1,045	5,610
1897....	649	746	2,483	279	4,157	310	823	1,374	33	2,540	6,697
1898....	595	883	2,847	265	45,90	175	435	838	67	1,515	6,105
1899....	584	859	2,783	354	4,580	230	659	1,432	148	2,469	7,049
1900....	681	988	3,276	328	5,273	94	204	356	85	739	6,012
1901....	611	949	3,255	213	5,028	175	619	1,610	188	2,592	7,620
1902....	627	770	2,387	430	4,214	134	470	971	124	1,699	5,913
1903....	503	870	3,054	285	4,712	202	788	1,539	64	2,593	7,305
1904....	518	900	3,456	645	5,519	89	481	926	21	1,517	7,036
1905....	410	894	2,673	750	4,727	88	377	804	213	1,482	6,209
1906....	501	1,055	3,599	666	5,821	82	269	597	121	1,069	6,890
1907....	415	880	3,446	601	5,342	148	452	915	30	1,545	6,887
1908....	338	1,048	3,406	377	5,069	156	571	1,187	10	1,924	6,993
1909....	258	1,014	2,809	571	4,652	67	492	731	18	1,308	5,960
1910....	358	948	2,334	689	4,329	91	335	617	32	1,075	5,404

Commerce.

Fiscal year.	Louisville and Portland Canal.			Open river.			Aggregate.
	Coal.	Other freight.	Total.	Coal.	Other freight.	Total.	
	Tons.	*Tons.*	*Tons.*	*Tons.*	*Tons.*	*Tons.*	*Tons.*
1895..	564,281	162,776	727,057	383,015	20,572	402,587	1,129,644
1896..	989,957	285,766	1,275,723	390,260	35,954	426,214	1,701,937
1897..	807,441	264,873	1,072,314	730,571	84,549	815,120	1,887,434
1898..	859,411	289,353	1,148,764	516,728	53,226	569,954	1,718,718
1899..	735,479	251,653	987,132	765,758	95,155	860,923	1,848,055
1900..	1,008,524	273,274	1,281,798	274,215	18,181	292,396	1,574,194
1901..	863,047	264,540	1,127,587	904,239	94,949	999,188	2,126,775
1902..	496,278	351,344	847,622	530,555	95,424	625,979	1,473,601
1903..	754,306	230,026	984,332	939,856	108,269	1,048,125	2,032,457
1904..	1,413,063	144,328	1,557,391	498,808	43,119	541,927	2,099,318
1905..	594,169	138,438	732,607	479,434	30,209	509,643	1,242,250
1906..	867,514	186,012	1,053,526	352,005	31,143	383,148	1,436,674
1907..	953,187	126,347 ½	1,079,534 ½	401,474	52,318	453,792	1,533,326 ½
1908..	1,044,201 ½	127,038 ½	1,171,240	475,236	69,985 ½	545,221 ½	1,716,461 ½
1909..	850,373 ½	112,954 ¼	963,327 ¾	319,434 ½	41,171	360,605 ½	1,323,933 ¼
1910..	593,293 ¾	106,039 ¼	699,333	289,429	52,561	341,990	1,041,323

H H 3.

Operating and Care of Lock and Dam at Grand Rapids, Wabash River.

The project and estimate for the operation and care of this lock and its appurtenant structures during the fiscal year ending June 30, 1910, contained the following items:

Regular force	$1,200
Repairs	43,263
Miscellaneous	500
Total	44,963

In the item for repairs provision is made for the renewal of the old wooden guide cribs at the lock and a portion of the old wooden protection crib immediately below the abutment of the dam, backing the dam and dredging deposit from the lock chamber and
479 approaches thereto. A contract for this work was entered into June 2, 1909, and approved June 28, 1909, but on account of slow progress made by the contractor, notwithstanding the excellent season for operations, the work is not yet completed. Provision is also made for renewing the lower slope of the dam and current repairs of a minor nature.

The following tabular statement shows the originally estimated quantity of work to be done under the contract for new guide walls and protection crib as well as that done to June 30, 1910:

Item.	Estimated quantity (cubic yards).	Done to June 30, 1910.
Concrete	1,297	1,234.11
Rock excavation	Nominal.	5.00
Crib excavation	3,782	3,588.00
Earth excavation	2,936	1,120.10
Embankment	881	881.00
Back fill	1,462	1,342.00
Dredging	7,000	9,663.00
Stone filling:		
Dam	800	800.00
Walls	1,207	757.60

A contract was made for the timber for repairs to the dam, and that material has all been received and stacked ready for use as soon as conditions for doing the work become favorable.

Minor repairs were made to the buildings, fences, etc., as became necessary.

Summary of Expenditures on Account of Operating and Care of Lock and Dam at Grand Rapids, Wabash River, during the Fiscal Year 1910, Showing General Items and Amounts Expended Under Each Heading.

Item.	Amount.
Services	$4,893.17
Supplies	48.89
Materials	14,725.74
Miscellaneous	638.60
Total	20,306.40

Allotments.

From act of July 5, 1884—		From act of July 5, 1884—	
March 12, 1897	$240.00	July 12, 1907	$1,361.56
July 23, 1897	1,703.25	July 17, 1908	874.50
July 15, 1898	1,451.35	October 7, 1908	35,618.50
July 21, 1899	9,346.16	From act of March 3, 1909	9,356.16
July 17, 1900	7,752.52		80,102.06
July 10 1901	5,184.34	Collections.	
July 29, 1902	1,311.38		
July 20, 1903	326.89	Sale of contact prints	11.70
July 15, 1904	2,711.06		
July 17, 1905	172.14	Total	80,113.76
July 16, 1906	2,692.25		

480 Contract in Force.

Contractor-: Roetzel & Chipman.
Date of contract: June 2, 1909.
Date of approval of contract: June 28, 1909.
Date of notification of approval of contract: July 6, 1909.
Date for completion of contract: Within ninety working days from date of notification of approval of contract, working days being defined in specifications.
For work at prices as follows, quantities being estimated:

Kind of work.	Quantity.	Price per cubic yard.
	Cubic yards.	
Concrete	1,297	$11.25
Rock excavation	Nominal.	3.00
Crib excavation	3,782	.40
Earth excavation	2,936	.35
Embankment	881	.35
Backfill	1,462	.20
Dredging	7,000	.50
Stone filling (dam)	800	.25
Stone filling (walls)	1,207	.55

Liquidated damages: In case of failure to complete as agreed upon, $15 for each and every day of delay.

Commercial Statistics.

Statement of Traffic and Commerce Passing the Lock at Grand Rapids, Wabash River, for the Fiscal Year Ending June 30, 1910.

Traffic.

Kind of boat.	Number.	Tonnage.
Passenger	38	166
Tow	65	518
Barges	80	13,830
Small craft	108	258
Rafts	0	.....
Total	291	14,722

Total number of lockages during the year is 223.

Commerce.

Article.	Quantity. *Tons.*
Corn	52½
Shells	126½
Lumber	8
Wheat	166
Stone	676
Miscellaneous	47½
Total	1,076½

Passengers, 86.

481 *Comparative Statement of Traffic and Commerce at Lock at Grand Rapids, Wabash River.*

Traffic.

Fiscal year.	Steamboats.	Barges and flats.	Rafts.	Miscellaneous.	Total.	Commerce.
	Number.	*Number.*	*Number.*	*Number.*	*Number.*	*Tons.*
1897	60	80	27	130	297	3,749
1898	46	76	31	199	352	2,374
1899	45	53	32	118	248	2,417
1900	49	53	36	100	238	6,419
1901	62	68	25	112	267	2,364
1902	48	45	14	171	278	2,448
1903	91	82	10	114	297	2,747
1904	139	53	38	249	479	4,370
1905	220	90	45	1,042	1,397	8,025
1906	514	265	13	1,346	2,138	3,990½
1907	576	197	28	1,085	1,886	6,600¼
1908	538	280	8	871	1,697	5,155½
1909	527	204	22	741	1,494	5,121
1910	103	80	....	108	291	1,075½

H H 4.

Improvement of Green River Above the Mouth of Big Barren River, Kentucky.

No operations under this project were in progress, the funds being nearly exhausted and existing project completed.

Expenditures during the year, $335.13, were for payment of awards in condemnation proceedings to acquire land for a roadway from the abutment site of Dam No. 6, to the nearest public highway.

The project having been completed, it is proposed to carry the small balance available, $245.04, to the surplus fund of the Treasury and make no further report until additional funds become available for work on this river.

In the opinion of the district officer, this river is not worthy of further improvement, for the reason that the stream itself above the Mammoth Cave, Kentucky, is not susceptible of being made a highway of commerce.

Appropriations.

July 13, 1892	$50,000.00	June 13, 1902	$180,000.00
August 18, 1894	25,000.00	March 3, 1905	5,000.00
June 3, 1896	20,000.00		
March 3, 1889	85,673.20	Total	365,673.20

Commercial Statistics.

Commercial statistics are given in the following report for "Operating and care of locks and dams on Green and Barren rivers, Kentucky."

Operating and Care of Locks and Dams on Green and Barren Rivers, Kentucky.

Description of original condition will be found at page 728 of this report. References to more extended information will be found on page 498, Annual Report of the Chief of Engineers for 1904.

The project and estimate for the fiscal year ending June 30, 1910, approved July 17, 1909, provided as follows:

It is proposed to operate the several locks and to make such repairs to them, the dams, guide cribs, dwellings, storehouses, and other government propert, at the several locks as are necessary to maintain the system and property in good condition, in connection with which work the snagging and dredging outfits will be operated to keep the pools, lock chambers, and entrances thereto free from snags, mud, leaves, and other obstructions brought into them by the varying stages of water; rebuild two derrick boats, build two new dump scows. The system now comprises seven locks and dams, viz., Nos. 1, 2, 3, 4, 5, and 6, Green River, and No. 1, Barren River, together with the lands and buildings owned by the United States.

The estimate for the fiscal year 1910 is summarized as follows:

Regular force	$42,287.00
Repairs	29,001.51
New dump scows	7,000.00
New derrick boats	5,500.00
Miscellaneous, supplies, and contingencies	5,000.00
Total	88,788.51

A general description of the work accomplished under the foregoing project and estimate follows.

The locks were kept open to all traffic throughout the year except for short periods while making needed repairs or while submerged by high water, during which latter traffic could pass over the dams. Such was the condition at Lock No. 1, Green River, 52 days during the year; at Lock No. 2, Green River, 54 days; at Lock No. 3, Green River, 16 days; at Lock No. 4, Green River, 16 days; at Lock No. 5, Green River, 10 days; at Lock No. 6, Green River, 5 days.

On account of repairs, Lock No. 1, Green River, was closed to traffic from August 30 to September 21, 1909, inclusive; Lock No. 4, Green River, from October 11 to 30, 1909, inclusive; Lock No. 5, Green River, from November 4 to 6, 1909, inclusive; Lock No. 6, Green River, from November 9 to 12, 1909, inclusive; and Lock No. 1, Barren River, from November 18 to 19, 1909, inclusive. On account of ice, these rivers could not be navigated for a short period during the early part of January, 1910.

The mud deposit and drift were cleaned from the lock walls, cribs, and approaches after each high stage of the water; snags and other obstructions removed from the pools as needed; the lock gates, gauges, flag poles, rowboats, and metal roofs repainted, and fences and

outbuildings whitewashed once during the year; the grass,
483 weeds, and other refuse removed from the reservations as needed; shade trees reset, buildings repaired, and other minor repairs made from time to time as became necessary in maintaining the system in good navigable condition and the public property in a useful state of preservation. The greater part of this work was performed by the regular force, but extra labor was necessary in some instances.

Lock No. 1, Green River.

The upper miter wall was rebuilt with concrete and new steel upper gates installed. The gates were built under contract by Charles Hegewald Company, of New Albany, Ind., and the concrete miter wall and the installation of gates by hired labor, assisted by the United States floating plant. The work was begun August 1 and completed September 30, 1909, when the old lock gates and the old timber removed from the old wall were collected and burned.

While the work was in progress the upper miter sills were renewed, also the lower section of the hollow quoin behind each upper gate; repairs made to breaks in channels carrying the miter post of each lower gate; and a new coffer sill framed and placed at lower end of chamber and the space between this and the lower miter sills reenforced with a layer of double strength concrete (13 cubic yards). Slight repairs were also made to the lower valves.

The cost of the work is made up as follows:

Labor	$2,644.12
Material	3,492.58
Barge hire	35.00
Traveling expenses	3.95
Total	6,175.65

This expenditure is divided thus:

Expended to June 30, 1909	$2,571.19
Expended during fiscal year 1910	3,604.46
Total	6,175.65

The expenditure for miscellaneous supplies at this lock, such as paints, oil, lime, skiff, ladders, material for repairs to dwelling, etc., amounted to $171.43.

Lock No. 2, Green River.

The above-water portion of four sections of the old wooden upper river sectional guide crib was rebuilt with concrete, the old crib work retained as foundation being first strengthened by round beech piles driven therein. New grillage was then framed between the several new sections and a walkway built thereon. The cost of the work is made up as follows:

Labor	$1,640.82
Material	602.43
Barge hire	35.00
Total	2,278.25

484 The expenditure is divided thus:

Expended to June 30, 1909	$455.75
Expended during fiscal year 1910	1,822.50
Total	2,278.25

Well.—An open well, located midway between the storehouse and lockmaster's dwelling, was dug to a depth of 28½ feet, walled with limestone slabs to a height one-half foot above surface of the earth and here constructed a concrete top, 6 feet wide, 6 feet long and 2 feet high; a small shed over all was erected. The cost of this well is made up as follows:

Labor	$160.50
Material	33.95
Total	194.45

Dam.—A section of the apron, 119 feet long, which was washed away during high water, was replaced with new timber, 2,927 lineal feet 10-inch by 10-inch beech being used and 184 cubic yards rubble stone filling. To better secure this work and prevent a recurrence holes were drilled into the slate foundation, wooden pins forced into these holes, and long spikes through the timbers and into these pins; 5½-foot spikes being used to secure the stringers and 4-foot spikes to secure the ties. The cost of these repairs is made up as follows:

Labor	$251.74
Material	305.00
Total	556.74

Bridge.—The old wooden bridge across the mill race was reconstructed—the abutments of concrete, the floor beams of steel, and the floor of heavy white oak timber taken from the old timber found under the abutments. In the execution of this work it was necessary to construct a cofferdam across mill race and do extensive excavating. One old cut-stone abutment was entirely removed except a small portion of the backfill; the other partly removed. The new abutments were placed immediately in front of the old masonry and have for a foundation slate rock at a depth slightly below the old foundations. All necessary backfill has been placed, and suitable approaches made to each end of the bridge. The cost of the work, exclusive of floating plant which supplied the sand and gravel for the concrete, etc., is made up as follows:

Labor	$2,537.00
Material	456.69
Team hire	126.20
Total	3,119.89

New lower steel gates.—These gates have been received, the necessary timber for heel and toe posts contracted for, and the gates will be installed whenever the stage of the water becomes favorable for placing coffers and unwatering the pit. The gates were built
485 under contract by the Louisville Bridge and Iron Company at a cost of $2,929. The cost of labor in placing the necessary blocking on board United States barge was $18.40.

Miscellaneous.—Considerable expenditure for labor was necessary here to remove, by use of clamshell bucket, the mud and leaves which were deposited in the lock chamber and near the upper gates by the several high stages of the water during the year, also for grading fill behind upper land guide crib, and for a new skiff, ladders, paints, oil, and other miscellaneous repair materials. This expense amounted to $569.98.

Lock No. 3, Green River.

The top of the upper section of the old timber upper river sectional guide crib was removed to a point about 1 foot below upper pool level and rebuilt with sound timber at a cost of $316.56.

New upper steel gates have been received, the necessary timber for heel and toe posts and miter sills contracted for, and the gates will be installed whenever river conditions will admit.

Gates built under contract by the Louisville Bridge and Iron Company—cost to the United States	$2,070.00
Expended for labor blocking up gates on barge	18.40
Expended for labor transferring and unloading one gate at this lock	41.95
Total expenditure to June 30, 1910	2,130.35

Miscellaneous.—This work consisted of certain repairs to dwellings, to walkway on lower shore crib, to lower valves, and the removal of deposits from the upper approach and lock pit after each high stage of the river, and, together with a new skiff, ladders, paints, oil, and miscellaneous repair material, cost $378.78.

New heel posts for lower steel gates.—The timber has been contracted for and will be framed and put on the gates during the installation of new upper gates.

Lock No. 4, Green River.

The upper miter wall was rebuilt with concrete, upper miter sills, anchor bars, and the lower section of hollow quoin behind each upper gate renewed, and new steel upper gates installed. The gates were built under contract by Charles Hegewald Company; the installation, reconstruction of wall, etc., by hired labor, assisted by United States floating plant. The sand and gravel used in the concrete was dredged from bars near Mammoth Cave and transferred to the lock by United States boats. In the execution of this work it was necessary to place coffers at each end of the lock and unwater

the chamber. When this was done, it was discovered that the lower gates and wickets needed considerable repairs, the channels carrying the miter posts being broken and the lower section of each of these posts somewhat rotted. A steel plate was riveted over the break in each channel, and this section of miter post replaced with new timber. The anchor bars and bolts were also renewed, and the
486 gates restored to their usual height by the insertion of heavy pieces of iron under the old pintle seats. A new coffer sill was framed and placed at the lower end of pit, and this reenforced with a layer of concrete (14 cubic yards). The cost of this work is made up as follows:

Labor	$2,666.92
Material	3,213.26
Total	5,880.18

This expenditure is divided thus:

Expended to June 30, 1909	$2,696.54
Expended during fiscal year 1910	3,183.64
Total	5,880.18

Miscellaneous.—The porches, windows, doors, roofs, etc., of the two dwellings were repaired; also the roadway up the hill to these dwellings. A new skiff, extension ladders, paints for repainting gates and houses, oil, and other miscellaneous repair material were purchased. Cost, $253.77.

During the winter season the machinery, concrete mixer, tools, etc., stored at this lock were overhauled and put in good condition; the entire stock of material, fittings, etc., rehandled and rechecked, and the unserviceable property collected; a larger workshop and office framed inside of main storehouse, a flue built and stove installed; the irons from the old upper lock gates collected and stored; a quantity of lumber was received and stored in lumber house; the two old unserviceable dump scows beached; paints, oil, and repair material assembled and distributed to the several locks and United States boats; a quantity of lumber, cement, etc., rehandled and restored, and the plant watched and cared for. The expenditures on account of this miscellaneous work, including cost of some tools, fittings, and supplies for replenishing stock in warehouse and not chargeable against any special item, was as follows:

Labor	$485.50
Material, etc.	1,619.61
Total	2,105.11

Lock No. 5, Green River.

On October 4, 1909, the chamber was unwatered in order to ascertain the true condition of the lock floor and locate the exact point of

leakage. The necessary coffers were placed at either end of the lock and when the water was reduced to a point 3 feet 2 inches below lower pool level a strong leak showed up at the usual place near the center of the chamber. After continuous pumping the water was then reduced to a depth of about 11 inches on floor and kept at this stage by the continuous operation of one 10-inch centrifugal pump at about two-thirds of its capacity. The necessary inspection being completed, the coffers were removed and the lock reopened to
487 traffic on the 6th of that month, the conclusion having been reached that this leakage comes from the lower pool under river wall at its juncture with the dam and was not of a serious nature. The snag boat and dredge assisted in unwatering the chamber. The cost of same, exclusive of the time of the crews of these two boats, was, for labor, $172.33.

The old wooden "catch basin" or sink at the head of the line of 24-inch tile, which conveys the water from the branch that crosses the reservation and drains the greater portion of the hill land to the river, was removed, the sewer extended up the drain about 23 feet, and another receiver built of concrete. Repairs were made to the slope adjoining the lower side of the abutment where a break appeared in the grauted riprap. Cedar brush and rubblestone were dumped into the break and the surface repaved. Slight repairs were made to the roadway and to the dwellings.

The cost of this miscellaneous work, including cost of a new skiff, two extension ladders, paints, oil, and other repair material, was $383.40.

Lock No. 6, Green River.

One hundred and six square yards of slope below the abutment were graded and protected with riprap and 150 cubic yards stone quarried, while blasting out roadway, for further protection here; cost, $111.20.

Two hundred and seventy-seven large derrick stone were placed in the river as a footing below the dam, at a cost of $107.92; repairs were made to a break in channel carrying the miter post on a lower shore gate; a closet erected back of lockman's cottage; the reservation on the abutment side of the river inclosed with woven-wire fencing; and repairs made to the two dwellings. The expenditure on account of this miscellaneous work, including cost of a new skiff, ladders, paints, oil, and other minor repair material, was $358.54.

The roadway recently purchased on the abutment side of the river at this lock, extending from the reservation to the county road, a distance of about 5,000 feet, was opened up, graded, and fenced; trees stumps, and bowlders removed where found necessary; fills made where needed and culverts placed across the branches. The greater part of this road was over very irregular ground, which required considerable drilling, blasting, and excavating in places and filling and walling at other points, and was very difficult, slow, and expensive work. The cost of this work is made up as follows:

Labor	$876.86
Material	286.25
Team hire	70.35
Total	1,233.56

Lock No. 1, Barren River.

Some needed repairs were made to the apron of the dam, 87 pieces 10-inch by 10-inch sheeting being renewed and 22 cubic yards
488 stone filling replaced, at a cost of $73 for labor and $183.55 for material; total, $256.55.

A break in the river leaf of the lower steel gate was also repaired, valve rods and rack renewed in both lower gates, and needed repairs made to porches, windows, doors, etc., of the two dwellings. The expenditure on account of this work, including cost of a new skiff, ladders, paints, oil, and other repair material, was $258.10.

Nolin River.

One of the Green River derrick boats rigged for snagging and manned by a crew of seven men, was employed in snagging operations on this river three days and during that time removed 20 snags and 6 overhanging trees and 120 cubic yards mud and leaves. Cost for labor was $54.

Surveying Claims on Account of Overflow, Upper Green and Nolin Rivers.

Two laborers were employed to assist a surveyor in this work eighty-four days and four hours at a cost of $135.20.

Floating Plant.

Steamer Mammoth Cave.—This boat was in active service from July 1 to December 9, 1909, January 18 to 22, 1910, and May 12 to the close of the fiscal year, engaged in removing obstructions from the several pools, towing material for the repair work at the several locks and assisting in that work, and in making inspection trips. Following is a summary of work done:

As snag boat:

Snags removed between mouth of Green River and Lock No. 1, Green River	16
Snags removed, pool No. 1, Green River	120
Snags removed, pool No. 2, Green River	122
Snags removed, pool No. 3, Green River	84
Snags removed, pool No. 4, Green River	56
Trees removed, pool No. 4, Green River	69
Trees deadened, pool No. 4, Green River	46
Snags removed, pool No. 5, Green River	75
Snags removed, pool No. 6, Green River	12
Snags removed, pool No. 1, Barren River	43
Trees removed, pool No. 1, Barren River	41
Snags removed, pool No. 2, Barren River	14
Trees removed, pool No. 2, Barren River	17
Trees deadened, pool No. 2, Barren River	103
Miles run as snag boat	1,659

As towboat:

Derrick boats towed	17
Dredges towed	5
Scows towed	4
Barges towed	23
Quarter boats towed	2
Miles run as towboat	1,600

As miscellaneous:

Trips made	7
Miles run as miscellaneous	928

489 During the winter season the machinery and equipment was thoroughly overhauled and repaired where needed, the supply tanks in hull enlarged, engines relined, packing renewed, heaters in boilers and furnaces repaired, scale removed from boilers and boilers tested, fusible plugs refilled, the inside of hull cleaned and painted, also roof, stacks, cabin, and machinery, the main deck forward of boilers recalked, the wheel overhauled, circles and arms cut down so as to render wheel 1 foot less in diamteter, rubber repaired, new hose and hose reels installed, also a watchman's clock, a new skiff purchased, and other minor repairs made. The cost of these repairs is made up as follows:

Labor	$610.50
Material	691.71
Total	1,302.21

Steamer Shawnee.—The boat arrived on Green River August 2, 1909, and was engaged in active service from that date to December 10, 1909, and again from March 28 to April 4, 1910, and April 27 to the close of the fiscal year, and was engaged in miscellaneous towing in connection with the repair work at the several locks on Green, Barren, and Rough rivers, in inspection work and acting as dredge tender, as follows:

As towboat:

Derrick boats towed	24
Dredges towed	8
Barges towed	76
Quarter boats towed	2
Scows towed	7
Miles run as towboat	3,328

As dredge tender:

Scows towed	87
Miles run as dredge tender	150

As miscellaneous:

Trips made	6
Miles run as miscellaneous	1,176

On December 9, 1909, the unprotected woodwork just over the boilers on this boat caught fire and was considerably charred and damaged. During the winter season this damaged section was removed and replaced with new timber and, together with all adjacent woodwork, covered with celasbestos fireproof sheeting and galvanized sheet iron. This new work and all pipes, stacks, wheel, roof, and machinery was then painted. Two new injectors, two supply tanks in hull, window and door screens, new hose and hose reels, and a watchman's clock were installed; the speaking and bell trumpets and bell cord renewed; 10 swinging fenders and 3 boiler-deck stanchions, a[illegible]ker in engine room, and a coal bunker amidship framed and placed; all pipes and machinery overhauled and repaired, packing and fittings renewed where found needed, a new skiff and cook stove purchased, also a forge and other tools, and a blacksmith shop fitted up aboard. The cost of these repairs, new equipment, etc., is made up as follows:

Labor	$474.35
Material	626.99
Total	1,101.34

Dredge Green River.—This boat was in commission from July 1 to December 14, 1909, and from June 20 to the close of the fiscal year, and was engaged in dredging operations and in assisting in the repairs at the several locks. A summary of work done follows:

Near Bowling Green, Barren River, barges removed 3; logs, 8.

Lock No 1, Green River:

Mud and leaves from lower approach	cubic yards..	3,145
Mud and leaves from upper approach	do....	185
Logs from lower approach	number..	3
Mud and leaves from lock chamber	cubic yards..	57

Lock No. 2, Green River:

Mud and leaves from lower approach	do....	2,850
Mud and leaves from upper approach	do....	2,470
Logs from lower approach	number..	17

Near Aberdeen coal tip:

Mud and leaves removed	cubic yards..	550
Sunken barges removed	number..	3

Bar below Lock No. 4, Green River:

Material removed	cubic yards..	1,350

Old coffer above Lock No. 4, Green River:

Material removed and cast as backing to dam	do....	550
Logs removed	number..	41

Massey Spring Landing:

Material removed	cubic yards..	50
Logs removed	number..	1

Tunks Island:

Material removed	cubic yards..	4,900
Logs removed	number..	22

Gunthers Cave:

Material removed	cubic yards..	60
Logs removed	number..	3

Bar near Mammoth Cave Landing:

Material removed	cubic yards..	2,460
Logs removed	number..	60

Two hundred and fifty cubic yards of the sand and gravel removed at this point was loaded onto barges and transferred to and used in the concrete work at Lock No. 2, Green River, and 580 cubic yards in the work at Lock No. 4, Green River.

During the winter season the machinery was overhauled and repaired and, together with roof and stacks, repainted; the sides and main deck recalked and payed with red lead; cabin and deck patched

in several places; the chain trough repaired; four timber heads, one kevel, and one large chock block renewed; a new inspirator, cook stove, watchman's clock, skiff, and water hose installed. The cost of these repairs, exclusive of the services of the engineman, who did considerable work on the machinery, was as follows:

Labor	$100.20
Material	216.09
Total	376.29

Derrick boat No. 3.—This boat, manned by seven men, assisted in the repair work at the several locks, and also rendered services in removing deposit from the lock chambers and approaches and in grading behind the upper shore wall at Lock No. 2, Green River. A summary of the latter work follows:

Lock No. 2, Green River:		
Mud and leaves from upper approach	cubic yards	2,595
Mud and leaves from lock chamber	do	195
Material handled in grading slope	do	700
Lock No. 3, Green River:		
Mud and leaves from upper approach	do	440
Mud and leaves from lower approach	do	210

During the winter season 121 square feet of the deck was renewed and the entire deck and gunwale seams above the water line recalked and payed; machinery overhauled and repaired; new friction blocks and other new fittings installed; the position of the steam winch again changed and the rigging adjusted to better enable the operator to handle clam-shell bucket while dredging, and the machinery, stack, and roof repainted. The cost of these repairs was as follows:

Labor	$121.60
Material	136.87
Total	258.47

New derrick boats.—Timber for rebuilding derrick boats Nos. 1 and 2 has been received, transferred to Lock No. 4, Green River, unloaded and stored convenient for the work, and the work of framing hulls begun June 20. The necessary oakum, corner bands, roofing, etc., have also been purchased. The expenditure to date on account of this project, exclusive of the cost of the yellow pine timber, which can not be definitely stated at this time, has been as follows:

Labor	$290.03
Material	239.89
Team hire	95.75
Total expenditure to June 30, 1910	634.67

Barges Nos. 1, 2, and 3.—The hulls of these boats were thoroughly cleaned out and all gunwale and rake seams above water line recalked and payed with red lead at a cost of $86.20.

536 Quarter boat.—Two kevels were renewed on this boat, the roof patched and painted and the gunwale seams above the water line recalked and payed with red lead at a cost of $15.90.

The description of operations, etc., in this report is taken from the report of W. S. Overstreet, master, who has had local supervision of the work throughout the year.

Summary of Expenditures on Account of "Operating and Care of Green and Barren Rivers, Kentucky," fiscal Year 1910, Showing General Items and Amount Expended Under Each Heading.

Items.	Amount.
Services	$52,624.75
Supplies	5,135.59
Materials	17,550.34
Miscellaneous	561.27
Total	75,871.95

Collections.

1909.

July	1. Jett & Turner, water power, etc., Lock No. 2, Green River	$50
July	7. William Boulton, water power, Lock No. 1, Barren River	75

1910.

Jan.	7. Craig Bros., water power, etc., Lock No. 3, Green River	75
Jan.	7. Jett & Turner, water power, etc., Lock No. 2, Green River	50
Jan.	13. R. C. Bryant, water power, Lock No. 2, Green River	150
	Total	400

All of these collections were deposited to the credit of the Treasurer of the United States.

Appropriations and Allotments.

Appropriation.

Act of August 11, 1888	$135,000.00

Allotments.

From act of July 5, 1884—		From act of July 5, 1884—	
January 4, 1889	$167,112.00	July 17, 1900	$69,349.64
July 29, 1889	139,110.00	July 19, 1901	43,236.82
July 17, 1890	53,783.47	July 30, 1902	105,629.33
July 16, 1891	77,807.26	July 20, 1903	34,720.47
July 15, 1892	46,264.26	July 25, 1904	23,610.25
July 15, 1893	49,730.88	July 17, 1905	48,517.10
July 13, 1894	25,927.23	July 16, 1906	73,129.48
January 26, 1895	6,000.00	July 22, 1907	96,856.93
July 20, 1896	51,080.31	September 21, 1907	40,000.00
September 2, 1896	77,684.35	July 15, 1908	89,016.40
July 23, 1897	57,459.61	July 17, 1909a	69,652.57
July 15, 1898	70,219.76		1,715,905.76
July 22, 1899	65,007.65		

a Act of March 3, 1909.

537 **Contract in Force.**

Contractor: R. M. Cunningham.
Date of contract: November 15, 1909.
Date for completion of contract: On or before February 10, 1910.
For lumber for repair of derrick boats, etc., as follows:

Long-leaf Yellow Pine.

	Pieces.	Thickness.	Width.	Length.
	Number.	*Inches.*	*Inches.*	*Feet.*
Bottom gunwales	8	8	16	40
Gunwales	4	6	14	44
Do	12	6	14	28
Do	8	6	14	20
Bulkheads	18	4	12	16
Do	12	4	16	28
Do	8	4	16	22
Do	4	4	16	40
Head blocks	4	17	12	26
Do	4	18	6	26
Floor beams	16	12	10	26
Rake beams	8	6	8	26
Rake frames	24	4	14	14
Deck beams	70	4	6	26
Stiffeners	8	6	12	16
Shores	80	4	4	18
Streamers	66	4	10	22
Kevels	6	7	8	12
Bottom planking	160	3	12	26
Decking	400	2¼	6	20
Do	20	2¼	12	20
Base blocks	2	12	18	16
Do	2	6	18	12
Masts	2	14	12	40
Booms	2	14	16	66
Stiff legs	4	12	12	46
Do	4	12	12	54
Rakes and bottom	40	3½	12	32
Do	40	3	12	26
Do	40	3	12	24
Do	40	3	12	22
Forms	100	2¼	12	20
Do	150	2¼	12	16
Needles	200	3⅛	12	12
Barge repairs	100	2½	6	20
Do	100	2	6	20
Repairs to buildings	50	1¾	5	24
Do	50	1¼	16	22
Do	100	⅞	12	20
Do	150	2	4	16
Do	40	4	4	18
Do	20	3	16	18

Price for the entire lot, $3,780.
Contract carried on under an implied waiver of time limit.

Commercial Statistics.

Statement of Traffic Passing the Locks on Green and Barren Rivers from July 1, 1900, to June 30, 1910.

Kind of craft.	Green River. Lock No. 1. Number.	Lock No. 1. Tonnage.	Lock No. 2. Number.	Lock No. 2. Tonnage.	Lock No. 3. Number.	Lock No. 3. Tonnage.	Lock No. 4. Number.	Lock No. 4. Tonnage.
Passenger boats	538	51,987	547	51,877	1,071	57,164	971	80,589
Towboats	718	32,386	415	11,801	137	6,632	232	11,347
Government boats	41	4,138	45	5,105	60	10,502	97	12,229
Barges	1,800	415,779	785	320,491	369	176,732	366	142,361
Small craft	752	6,826	612	4,742	416	2,297	404	1,910
Rafts	210	.....	207	.....	107	.....	46	.....
Total	4,059	511,116	2,611	394,016	2,160	253,327	2,116	248,436
Lockage, fiscal year	3,225	.....	2,181	.....	2,243	.....	2,037	.....

Statement of Traffic Passing the Locks on Green and Barren Rivers from July 1, 1909, to June 30, 1910—Continued.

Kind of craft.	Green River. Lock No. 5. Number.	Lock No. 5. Tonnage.	Lock No. 6. Number.	Lock No. 6. Tonnage.	Barren River. Lock No. 1. Number.	Lock No. 1. Tonnage.
Passenger boats	207	20,409	145	14,936	1,166	82,676
Towboats	179	7,383	106	5,053	159	7,281
Government boats	55	7,844	29	4,442	56	8,509
Barges	394	153,262	154	66,921	295	94,046
Small craft	330	2,045	802	1,833	246	1,136
Rafts	21	.....	32	.....	3	.....
Total	1,186	190,943	1,268	93,185	1,925	193,648
Lockages, fiscal year	1,117	.....	1,348	.....	1,879	.....

Statement of Commerce Passing the Locks on Green and Barren Rivers from July 1, 1909, to June 30, 1910.

Articles.	Green River. Lock No. 1.	Lock No. 2.	Lock No. 3.	Lock No. 4.	Lock No. 5.	Lock No. 6.	Barren River, Lock No. 1.
	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.
Coal	29,851	723	280	4,537	1,535	63	4,464
Corn	1,482	991	548	350	30	11	350
Wheat	129	81	109	29	.....	.....	37
Salt	1,264	831	380	200	98	55	142
Oil	398	282	241	116	56	19	110
Flour	1,743	1,461	769	368	227	89	417
Sugar	931	783	408	115	48	10	125
Molasses	64	30	32	6	6	1	2
Cement	343	330	64	61	28	1	11
Tobacco	3,476	2,269	826	1	.....	.....	3
Hides	1	1	½	.....	.....	.....	.....
Hay	328	195	95	154	33	32	211
Straw	9	4	3	4	1	.....	1
Cattle	1,844	1,269	615	73	4	2	21
Swine and sheep	1,366	706	378	158	4	.....	89
Horses and mules	78	62	66	96	.....	.....	90
Lumber	5,070	3,581	211	143	160	247	420
Timber	100,104	76,140	41,288	13,029	10,700	8,556	2,917
Staves	17,494	16,729	111	86	.....	.....	32
Shingles	54	11	6	6	3	.....	3
Ties, railroad	68,716	59,138	53,741	34,938	26,836	17,316	761
Hoop poles	831	835	36	.....	.....	.....	.....
Manufactured iron	87	64½	36½	42½	32½	27½	43
Asphalt	.....	.....	.....	.....	10,488	.....	10,488
Miscellaneous	22,536½	18,837	11,850	6,272¾	2,111	940	6,451¼
Total	258,199½	185,353½	112,094	60,785¼	52,400½	27,369½	27,188¼
Passengers, number	9,502	6,386	9,010	9,718	2,773	3,496	12,163

539

Comparative Statement of Traffic and Commerce on Green and Barren Rivers. Kentucky.

Fiscal year.	Traffic.									
	Lock No. 1, Green River.					Lock No. 2, Green River.				
	Steamboats.	Barges and flats.	Rafts.	Miscellaneous.	Total.	Steamboats.	Barges and flats.	Rafts.	Miscellaneous.	Total.
	No.	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*
1889....	284	129	350	138	901	272	107	300	15	694
1890....	854	386	1,079	111	2,430	776	286	768	12	1,842
1891....	875	456	1,082	152	2,565	768	358	721	24	1,871
1892....	787	449	898	184	2,318	634	272	785	6	1,697
1893....	823	506	914	161	2,404	304	379	745	9	1,437
1894....	832	437	602	176	2,047	477	333	413	9	1,232
1895....	789	606	240	264	1,899	652	494	152	46	1,344
1896....	1,143	553	620	162	2,478	702	469	440	168	1,779
1897....	919	539	226	157	1,841	935	632	239	252	2,058
1898....	1,122	882	340	200	2,544	1,037	847	260	182	2,326
1899....	1,174	803	570	169	2,716	948	819	469	184	2,420
1900....	1,088	1,239	481	132	2,940	946	1,087	521	156	2,710
1901....	1,360	1,765	592	139	3,856	1,220	1,443	302	137	3,102
1902....	992	1,113	530	137	2,772	820	927	364	255	2,366
1903....	1,077	1,403	608	158	3,246	982	1,044	408	229	2,663
1904....	1,378	2,127	338	185	4,028	1,105	1,384	227	207	2,923
1905....	1,339	2,275	454	253	4,321	1,058	1,297	350	231	2,939
1906....	1,449	1,729	262	377	3,817	1,095	1,033	322	236	2,686
1907....	1,531	2,525	309	542	4,907	1,221	937	283	297	2,733
1908....	1,706	2,910	294	546	5,456	1,148	1,440	290	278	3,156
1909....	1,380	1,948	325	826	4,479	963	899	271	352	2,485
1910....	1,297	1,800	210	752	4,059	1,007	785	207	612	2,611

Comparative Statement of Traffic and Commerce on Green and Barren Rivers. Kentucky.

Fiscal year.	Traffic.									
	Lock No. 3, Green River.					Lock No. 4, Green River.				
	Steamboats.	Barges and flats.	Rafts.	Miscellaneous.	Total.	Steamboats.	Barges and flats.	Rafts.	Miscellaneous.	Total.
	No.	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*	*No.*
1889....	.....	.....	200	.....	200	115	49	41	51	256
1890....	.....	.....	.....	.....	.....	126	55	36	123	340
1891....	225	57	372	101	755	399	141	87	134	761
1892....	492	305	426	212	1,435	619	276	208	129	1,232
1893....	509	269	560	249	1,587	553	333	292	144	1,322
1894....	611	469	304	227	1,611	592	391	117	115	1,215
1895....	711	456	123	212	1,502	866	471	54	116	1,507
1896....	880	486	234	238	1,838	1,307	676	112	102	2,197
1897....	867	522	103	144	1,636	1,249	820	53	53	2,175
1898....	835	613	133	167	1,748	1,192	884	39	176	2,291
1899....	712	532	315	220	1,779	1,073	828	159	141	2,201
1900....	750	695	288	158	1,891	1,099	929	122	138	2,288
1901....	1,019	1,081	202	108	2,410	1,347	1,017	75	141	2,580
1902....	757	780	293	223	2,053	1,012	814	102	229	2,157
1903....	717	707	278	233	1,935	1,049	763	111	249	2,172
1904....	827	893	191	146	2,057	910	817	68	86	1,881
1905....	775	910	301	171	2,157	1,115	917	84	103	2,219
1906....	1,111	645	274	262	2,292	957	726	117	108	1,908
1907....	1,366	773	114	203	2,456	1,224	891	111	212	2,438
1908....	1,654	1,154	226	278	3,312	1,228	987	90	206	2,510
1909....	1,457	668	195	354	2,674	1,557	695	81	328	2,661
1910....	1,268	389	107	416	2,160	1,300	386	46	404	2,116

540

Comparative Statement of Traffic and Commerce on Green and Barren Rivers, Kentucky.

Fiscal year.	Traffic.									
	Lock No. 5, Green River.					Lock No. 6, Green River.				
	Steamboats.	Barges and flats.	Rafts.	Miscellaneous.	Total.	Steamboats.	Barges and flats.	Rafts.	Miscellaneous.	Total.
	No.	No.	No.	No.	No.	No.	No.	No.	No.	No.
1889	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1890	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1891	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1892	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1893	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1894	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1895	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1896	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1897	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1898	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1899	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1900	238	255	47	76	616	.....	.....	.....	.....	.....
1901	376	383	29	217	1,005	.....	.....	.....	.....	.....
1902	391	388	53	182	1,014	.....	.....	.....	.....	.....
1903	393	465	59	208	1,125	.....	.....	.....	.....	.....
1904	520	646	49	207	1,422	.....	.....	.....	.....	.....
1905	731	633	87	272	1,723	.....	.....	.....	.....	.....
1906	774	480	73	104	1,431	290	167	52	123	632
1907	690	570	57	119	1,436	446	334	47	473	1,300
1908	599	661	45	161	1,466	419	354	35	695	1,503
1909	563	557	50	317	1,487	415	318	38	700	1,471
1910	441	394	21	330	1,186	280	154	32	802	1,268

Comparative Statement of Traffic and Commerce on Green and Barren Rivers, Kentucky.

Fiscal year.	Traffic.				
	Lock No. 1, Barren River.				
	Steamboats	Barges and flats.	Rafts.	Miscellaneous.	Total.
	No.	No.	No.	No.	No.
1889	112	57	10	85	264
1890	23	20	8	13	64
1891	342	177	7	3	529
1892	555	180	36	30	801
1893	518	290	32	14	854
1894	534	347	22	42	945
1895	618	335	32	56	1,041
1896	859	351	15	36	1,261
1897	842	451	10	104	1,407
1898	789	553	1	86	1,429
1899	826	528	3	119	1,476
1900	797	462	4	103	1,366
1901	992	497	20	93	1,602
1902	859	499	10	108	1,476
1903	1,066	653	13	120	1,852
1904	819	486	5	53	1,363
1905	961	404	1	159	1,525
1906	1,212	462	8	71	1,753
1907	998	445	9	78	1,530
1908	748	355	5	140	1,348
1909	1,388	369	2	180	1,939
1910	1,381	295	3	246	1,925

541

Comparative Statement of Traffic and Commerce on Green and Barren Rivers, Kentucky.

Fiscal year.	Commerce. Green River. Lock No. 1. Tons.	Lock No. 2. Tons.	Lock No. 3. Tons.	Lock No. 4. Tons.	Lock No. 5. Tons.	Lock No. 6. Tons.	Barren River, Lock No. 1. Tons.
1889....	.....	.....	.....	.....	.....	.....	.....
1890....	.....	.....	.....	.....	.....	.....	.....
1891....	.....	.....	.....	.....	.....	.....	.....
1892....	.....	.....	.....	.....	.....	.....	.....
1893....	.....	.....	.....	.....	.....	.....	.....
1894....	.....	.....	.....	.....	.....	.....	.....
1895....	.....	.....	.....	.....	.....	.....	.....
1896....	.....	.....	.....	.....	.....	.....	.....
1897....	.....	.....	.....	.....	.....	.....	.....
1898....	193,475	161,841	109,107	84,761	.....	.....	28,483
1899....	257,104	184,895	84,139	43,973	.....	.....	43,504
1900....	378,684	288,948	172,016	139,530	47,098	.....	33,355
1901....	452,522	285,744	183,512	117,054	57,058	.....	46,445
1902....	385,548	242,722	153,037	110,468	47,940	.....	30,616
1903....	457,386	259,142	165,746	106,119	59,525	.....	48,738
1904....	329,896	253,079	179,702	108,294	69,226	.....	32,982
1905....	466,015	303,274	257,181	157,208	107,848	.....	38,486
1906....	342,495	242,601	201,012	111,316	75,468	34,325	61,030
1907....	372,915	271,762	205,497	135,320	95,099	58,621	43,993
1908....	476,274	353,269	293,882	167,227½	108,887	65,309	37,201
1909....	383,581¾	251,671	197,477½	122,508¾	88,350½	46,883	30,787¼
1910....	258,199½	185,353½	112,094	60,785¼	52,400½	27,369½	27,188½

H H 6.

Operating and Care of Lock and Dam on Rough River, Kentucky.

The estimate and project for the operation and care of this lock and its appurtenant structures during the fiscal year ending June 30, 1910, contained the following items, the funds for which were made available July 15, 1909:

Regular force	$708
Repairs, supplies, etc	800
Total	1,508

The lock was open to traffic three hundred and eighteen days during the year; it was closed thirty days on account of high water and seventeen days on account of ice; in the latter cases traffic passed over the dam.

During the year the lock gates, gauges, snubbing posts, and rowboat were repainted, fences and outbuildings whitewashed, mud and drift removed from the lock walls, cribs, and approaches after each high stage of water, slight repairs made to the apron of the dam and to steps to the dwelling, grass and weeds cut from the grounds, and snags, slides, and other obstructions removed from the river as far upstream as Hartford, Ky. A summary of the work follows:

Snags removed	112
Stumps removed	47
Whole trees removed	304
Mud removed.....cubic yards..	2,534
Trees deadened	70
Miles worked over	30

542 *Summary of Expenditures on Account of Operating and Care of Rough River, Kentucky, During the Fiscal Year 1910, Showing General Items and Amount Expended Under Each Heading.*

Items.	Amount.
Services	$1,168.78
Supplies	38.36
Materials	97.25
Miscellaneous	.00
Total	1,304.39

Allotments.

From act of July 5, 1884—		From act of July 5, 1884— Continued.	
July 23, 1897	$2,086.00	July 12, 1906	$1,013.95
July 22, 1899	714.97	July 12, 1907	1,363.07
July 17, 1900	686.31	July 17, 1908	980.15
July 10, 1901	763.66	July 15, 1909a	1,090.76
August 5, 1902	1,079.62	Total	12,589.22
July 20, 1903	664.03		
July 14, 1904	1,029.66		
July 17, 1905	1,117.04		

a Act of March 3, 1909.

Commercial Statistics.

Statements of Traffic and Commerce Passing Lock No. 1, Rough River, Kentucky, from July 1, 1909, to June 30, 1910.

Traffic.

Kind of boat.	Number.	Tonnage.
Passenger	164	2,009
Tow	49	742
Government	6	550
Barges	88	9,457
Small craft	402	1,974
Rafts	74	.....
Total	783	14,732

Total number of lockages during the fiscal year 1910, 676.

Commerce.

Articles.	Quantity. Tons.	Articles.	Quantity. Tons.
Coal	16	Cattle	2
Corn	95	Swine and sheep	2
Wheat	117	Lumber	129
Salt	60	Timber	21,928
Oil	36	Ties, railroad	341
Flour	84	Manufactured iron	9½
Sugar	44	Miscellaneous	523
Cement	30	Total	23,439½
Hay	14		

Number of passengers, 408.

499 *Comparative Statement of Traffic and Commerce at Lock No. 1, Rough River, Kentucky.*

Fiscal year.	Traffic. Steamboats.	Barges and flats.	Rafts.	Miscellaneous.	Total.	Commerce.
						Tons.
1891	.....	.....	.....	.....	.....	98,161
1892	.....	.....	.....	.....	.....	50,000
1893	.....	.....	.....	.....	.....	75,000
1894	.....	.....	.....	.....	.....	64,401
1895	.....	.....	.....	.....	.....	26,945
1896	.....	.....	.....	.....	.....	30,445
1897	.....	.....	.....	.....	.....	16,538
1898	81	70	178	154	483	15,488
1899	164	29	207	132	532	21,831
1900	260	72	270	168	770	41,411
1901	175	114	121	247	657	20,666
1902	98	105	111	191	505	21,703
1903	128	76	133	235	572	32,919
1904	182	216	115	137	650	33,076
1905	192	219	160	126	697	55,333
1906	257	164	151	303	875	36,800
1907	202	75	144	434	855	30,084
1908	217	95	151	457	920	37,163
1909	146	80	49	300	575	21,332½
1910	219	88	74	402	783	23,439½

[Endorsed:] Interstate Commerce Commission. Docket No. 4310. Exhibit No. 1. Witness, M. H. Crump, — Complainants. Date Nov. 27, 1911. Steno. Beall.

COMPLAINANTS' EXHIBIT No. 2.

Docket 4310.

Annual Report of the Chief of Engineers, 1910.

Appendix B B.

Report Upon the Improvement of Rivers and Harbors in the Nashville, Tenn., District.

Wm. W. Harts, Major, Corps of Engineers, U. S. A., in Charge.

Annual Report of the Chief of Engineers, 1910.

Appendix B B.

Reports Upon the Improvement of Rivers and Harbors in the Nashville, Tenn., District.

Wm. W. Harts, Major, Corps of Engineers, U. S. A., in Charge.

Interstate Commerce Commission. Docket No. 4310. Exhibit No. 2. Witness, W. H. Crump, — Complainants. Date Nov. 27, 1911. Steno. Beall.

500 *Extract from the Annual Report of the Chief of Engineers to the Secretary of War.*

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
WASHINGTON, September 30, 1910.

* * * * * * *

Improvement of Rivers and Harbors in the Nashville, Tennessee, District.

This district was in the charge of Maj. Wm. W. Harts, Corps of Engineers, Division engineers, Col. Wm. T. Rossell, Corps of Engineers, to September 21, 1909, and Lieut. Col. J. G. Warren, Corps of Engineers, since that date.

1. Obion and Forked Deer rivers, Tennessee.—The river and harbor act of June 13, 1902, authorized the joint improvement of the Obion and Forked Deer rivers.

(*a*) Obion River.—This stream is situated in northwestern Tennessee. It is formed by the junction of its North and South forks about 6 miles northeast of Obion, which is considered the head of navigation for steamers and other craft, and it flows in a general southwesterly direction about 75 miles, entering the Mississippi River some 5 miles below the Missouri and Arkansas state line. It is probable that rafting and logging are feasible as far up as 25 miles above Obion. The improved section is about 69 miles long.

In its original condition the obstructions on this river were almost wholly drift, snags, and overhanging trees, which made navigation difficult and uncertain.

The original project was based on a survey made in 1891, and was adopted by the river and harbor act of July 13, 1892. The scope of the work was to obtain 3-foot navigation at low water by means of open-channel work, at an estimated cost of $50,000. After an expenditure of $15,795.01 this project was modified in June, 1897, to one for maintenance, so as to keep the river free from such obstructions as would prevent navigation at medium and high stages, at an estimated annual cost of $2,500.

In 1903 the annual expenditure recommended for maintenance of the Obion and Forked Deer rivers combined was reduced from $4,500 to $2,250. (See Annual Report for 1904, p. 2351.)

Appropriations and allotments aggregating $29,618.50 have been made for the Obion River, of which $28,516.07 have been expended under the present project to June 30, 1910.

No work was done during the past fiscal year. The funds expended were applied to maintenance of the floating plant.

The expenditures have resulted in temporary improvements to the channel, lessening the dangers to navigation at medium and higher stages from Obion, Tenn., to the mouth of the river. The navigability of the Obion River depends largely on the stage of water

in the Mississippi. Navigation is not practicable at low
501 stages.

For the calendar year ending December 31, 1909, the reported commerce on this stream amounted to 7,128 short tons, having an estimated value of about $71,758, consisting almost wholly of timber products; passengers carried, 18.

For additional details of the Obion River, see the account of its survey in the Annual Report of 1891, page 2992. The effect of the improvement on freight rates is not believed to be important and can not readily be ascertained.

The district officer expresses the opinion, for reasons stated in his report, that further appropriations under this project are not warranted.

In acting upon an application by local interests the Secretary of War, under date of July 18, 1910, notified them that no objection would be made to the proposed operations looking to certain diversions of the stream in the interest of drainage, unless it should be found that the work contemplated would interfere with the navigable capacity of the stream. If the further improvement of the river in the interest of navigation be abandoned, as recommended, it is possible that the unrestricted utilization of the stream for drainage purposes may be of material advantage to local interests.

July 1, 1909, balance unexpended	$1,004.38
Amount allotted from appropriation made by river and harbor act approved June 25, 1910	218.50
	1,222.88
June 30, 1910, amount expended during fiscal year, for maintenance of improvement	120.45
July 1, 1910, balance unexpended	1,102.43
July 1, 1910, outstanding liabilities	13.00
July 1, 1910, balance available	1,089.43

(*b*) Forked Deer River.—This stream is formed by the junction of its North and South forks about 8 miles southwest of Dyersburg, and flows thence in a general southwesterly direction about 21 miles, entering the Obion River about 3½ miles from the Mississippi. Dyersburg is considered the head of navigation on the North Fork. Jackson, Tenn., 95½ miles above the mouth was formerly considered the head of navigation on the South Fork, but in recent years navigation appears to have been limited to the lower portion of this stream. It is probable that rafting and logging can be carried on to a distance of 25 miles above Dyersburg. The improved section is about 21 miles long.

In their original condition the main stream and its branches, the North Fork and South Fork, were greatly obstructed by snags and drift. The original project may be said to have been adopted by the river and harbor act of August 2, 1882, and was based on a report of an examination of South Fork, dated December 16, 1880. This project was subsequently modified by extension to include the North Fork and main stream until appropriations aggregating $25,000

were made and expended. The operations proposed were open-channel work by which it was sought to maintain a satisfactory channel all the year round. This project was set aside in view
502 of the fact that the result aimed at could not be accomplished by this method.

The present project for maintenance, based on the provisions of the act of March 3, 1899, provided for the removal of surface obstructions from the Forked Deer River and its navigable branches (North and South forks), at an estimated annual cost of $2,000. In 1903 the annual expenditure recommended for maintenace of both the Obion and Forked Deer rivers was reduced from $4,500 to $2,250. (See Annual Report for 1904, p. 2351.) Under this project appropriations and allotments aggregating $12,818.50 have been made, of which $11,886.82 has been expended to June 30, 1910. The expenditures have resulted in temporary improvements to the channel, lessening the dangers to navigation at medium and higher stages. The navigability of the Forked Deer River depends largely upon the stage of water in the Mississippi. Navigation is not practicable at low stages.

No work was done during the past fiscal year. The funds expended were applied to the maintenance of the floating plant.

For the calendar year ending December 31, 1909, the reported commerce on this stream amounted to 3,681 short tons, having an estimated value of about $47,500, and consisted almost wholly of timber products. Passengers caried, 201.

For reference to sundry examinations and surveys of the Obion and Forked Deer rivers, see the Report of the Chief of Engineers for 1908, page 553. For the report of the survey of the South Fork of the Forked Deer River dated January 22, 1908, see House Document No. 945, Sixtieth Congress, first session.

The effect of the improvement on freight rates is not believed to be important and can not readily be ascertained.

This river has been combined with the Obion in the work of improvement, and they have ordinarily been considered together in making appropriations of funds.

The district officer expresses the opinion, for reasons stated in his report on Obion River, that further appropriations under this project are not warranted.

July 1, 1909, balance unexpended		$833.63
Amount allotted from appropriation made by river and harbor act approved June 25, 1910		218.50
		1,052.13
June 30, 1910, amount expended during fiscal year, for maintenance of improvement		120.45
July 1, 1910, balance unexpended		931.68
July 1, 1910, outstanding liabilities		11.50
July 1, 1910, balance available		920.18

508 Consolidated.

July 1, 1909, balance unexpended	$1,838.01
Amount appropriated by river and harbor act approved June 25, 1910	437.00
	2,275.01
June 30, 1910, amount expended during fiscal year, for maintenance of improvement	240.90
July 1, 1910, balance unexpended	2,034.11
July 1, 1910, outstanding liabilities	24.50
July 1, 1910, balance available	2,009.61

(See Appendix B B 1.)

2. Cumberland River, Tennessee and Kentucky.—The Cumberland River rises in eastern Kentucky, on the western slope of the Cumberland Mountains, flows in a tortuous course of about 688 miles through eastern Kentucky, middle Tennessee, and western Kentucky, and discharges into the Ohio River near Smithland, Ky. From Burnside, Ky., the head of steamboat navigation, to Smithland, Ky., the distance is 518 miles by the river, 203 miles being in the State of Kentucky and 315 miles in the State of Tennessee.

(*a*) Below Nashville (193 miles).—From 1839 to 1840 the legislatures of Tennessee and Kentucky made several appropriations for the improvement of the navigation of the Cumberland River, but little benefit to the general condition of the river seems to have been accomplished. The Cumberland Navigation Company was incorporated by the State of Tennessee in 1846 for improving the "navigation of the Cumberland River below the town of Nashville by means of a system of locks and dams," but nothing effective was done to carry out the proposed improvement.

In its original condition this section of the river was considerably obstructed by rocky ledges, conglomerate, gravel, and said bars, snags, and other surface obstructions, on account of which navigation was rendered very uncertain.

From July 17, 1832, to July 7, 1838, Congress made five appropriations for improving the Cumberland River, Tennessee and Kentucky, aggregating $155,000, $20,000 of which was to be expended below Nashville and $135,000 on the river generally, but all the appropriations for the above period were expended below Nashville, to improve the worst localities.

Between 1838 and 1871 no appropriations for this river were made. The original project (open channel work), which provided specifically for operations on this section, was adopted by the river and harbor act of March 3, 1871, based on project submitted January 20, 1871. The work proposed was as follows: To excavate the bars and rock ledges in order to get an additional depth of water; to contract the waterways in places in order to get the requisite depth; to remove snags and bowlders from the main channel; and to restrain tributary streams in well-determined channels at their junction with the river.

504 To increase the depth of water at the shoals in Kentucky Chute at the junction of the Cumberland with the Ohio River, a Board of Engineer officers in 1888 recommended the construction of a dike near Smithland, Ky., at an estimated cost of $129,600. The river and harbor act of September 19, 1890, allotted $30,000 from the appropriation for improving Cumberland River below Nashville, to be expended in improving the mouth of the river, as recommended.

Appropriations aggregating $305,000 were made and expended, thus completing the above project. The expenditures under the old project have resulted in lengthening the season of navigation by giving an increased depth at low water combined with greater security in the passage of obstructions.

The present project, or project of canalization of the Cumberland River below Nashville, may be considered to have been adopted by the river and harbor act of July 13, 1892. It contemplates the extension of the lock and dam system of the upper river over a considerable portion of the river below Nashville by the construction of seven locks and dams. (Annual Report, Chief of Engineers for 1909, p. 586). Under this project, Lock A, the first of the series, has already been placed in operation.

A modification of this project was adopted by the river and harbor act of June 25, 1910, based on a survey of the lower Cumberland, the reports of which are printed in House Documents No. 758, Sixtieth Congress, first session, and No. 1418, Sixtieth Congress, second session. The modified project contemplates the completion of the canalization scheme by the construction of five additional locks, beginning with Lock B, about 51.5 miles below Nashville, and ending with Lock F, about 147 miles below Nashville, thus reducing the total number of locks from seven to six. The proposed locks are to be 52 feet wide and 280 feet long, with lifts varying from 10 to 13.1 feet. It also includes dredging the rest of the river to the mouth (about 46 miles) to a depth of 6 feet at low water, the total estimated cost of the additional improvement being $3,164,882.40. The act of June 25, 1910, appropriated $213,000 cash and authorized contracts to an additional amount of $450,000.

Under the project of canalization, appropriations and allotments aggregating $673,000 have been made, which together with the receipts from other sources, amounting to $1,002.80, makes a total of $674,002.80.

The total expenditures under the present project to June 30, 1910, amount to $445,518.94, of which sum about $25,670.93 have been applied to maintenance.

These expenditures have resulted in the periodical removal of snags and other surface obstructions from the navigable channel, the protection of the bank of a part of Cumberland Island in Kentucky Chute at the mouth of the river, and the completion and placing in operation of Lock A, November 26, 1904, whereby 6-foot navigation has been afforded all year round for a distance of 38.8 miles above the lock. The season of profitable navigation from the Ohio River

to Nashville has been prolonged by forty-five to ninety days,
505 depending on the stage of water, making it now average eight months annually. Lock A is 41.4 miles below Nashville.

The Cumberland River below Nashville is usually navigable for all steamboats plying on it for six months in each year; for boats not drawing over 3 feet, from six to eight months, and for boats drawing 16 inches or less, the whole year. General navigation, however, is practically closed for several months each year during low water. As a general rule, when the stage is below 2½ feet, navigation is closed; between 2½ feet and 5 feet, it is uncertain, and above 5 feet, good. A table is given on page 390 of the Annual Report of the Chief of Engineers for 1902, showing the stages at Burnside, Carthage, Nashville, and Clarksville for the years 1898-1902.

No work of improvement was carried on during the past fiscal year.

The funds expended during the fiscal year were applied to the partial payments for a snag boat and gasoline boat, to be used as a tender for the snag boat, in connection with the work of removing surface obstructions from the Cumberland River below Nashville from time to time so as to maintain this section in a navigable condition.

For references to detailed reports and maps and to the report of the Board of Engineers for Rivers and Harbors concerning the further improvement of the Cumberland River see the Annual Report of the Chief of Engineers for 1908, page 555.

The reported commerce for the calendar year 1908 was 193,118 short tons, having an estimated value of about $4,723,833, passengers carried, 26,296. The tonnage consisted principally of timber and farm products and general merchandise.

It is reported that the Tennessee Central Railroad, which parallels the Cumberland River from Nashville to Clarksville, had rates in force before the completion of Lock and Dam A of from 18 to 26 cents per 100 pounds, and since this lock was put in operation these rates have been reduced above the lock to from 6 cents to 12 cents per 100 pounds.

The quantity of grain handled by the local steamboats has increased considerably since the completion of Lock A and two new lines of steamboats, the Tyner Line and Nashville Steamboat Company, have been added to the river trade.

It appears from reliable information that the cost of transporting grain by river to Nashville is about 8 cents per 100 pounds from points below Evansville on the Ohio River, while it is 15 cents per 100 pounds by way of river to Henderson or Uniontown, Ky., and thence by rail to Nashville, or a saving of about 7 cents per 100 pounds by all river transportation. Within the past year freight rates by rail have advanced 12½ to 20 per cent on every class of merchandise going south out of Nashville, while into Nashville it appears that the tariff has not been advanced. There is little doubt that the competition offered by the Cumberland River even in its present condition, is the cause of the favorable rates into Nashville.

The amount required for expenditure in the fiscal year ending

June 30, 1912, will be applied toward the construction of
506 Locks B and C. This amount is covered by the contract authorization provided by the act of June 25, 1910, and the appropriation will be carried by the next sundry civil act. In order that the improvement may be prosecuted most economically and advantageously it is recommended that the next river and harbor act provide a further contract authorization for work on this project, preferably for the entire amount of the estimate for its completion, or at least in the sum of $600,000 which is the balance (in round numbers) of the estimate for the construction of locks and dams B and C. The work proposed is necessary for the extension of the improvement.

July 1, 1909, balance unexpended	$10,240.69
Received on account sales, condemned property	16.50
Amount appropriated by river and harbor act approved June 25, 1910	223,000.00
	233,257.19
June 30, 1910, amount expended during fiscal year, for maintenance of improvement	4,773.33
July 1, 1910, balance unexpended	228,483.86
July 1, 1910, outstanding liabilities	227.33
July 1, 1910, balance available	228,256.53
Amount (estimated) required for completion of existing project.	a 2,951,882.40
Amount required for expenditure in fiscal year ending June 30, 1912, for works of improvement. Submitted in compliance with requirements of sundry civil act of June 4, 1897.	a 250,000.00

a Exclusive of the balance unexpended July 1, 1910.

(*b*) Above Nashville (357 miles).—This section extends from Nashville to the mouth of Rockcastle River. In its original condition it was considerably obstructed by rock reefs, ledges, snags, etc., which greatly impeded navigation between Nashville and Burnside (about 325 miles), while above Burnside the Smith shoals formed a serious obstruction to navigation at practically all stages.

The original scheme of improvement above Nashville, as modified and extended, contemplated open-channel work from Nashville, Tenn., to Cumberland Ford (Pineville, Ky.), 479 miles, at an estimated cost of $374,764, and was based on projects submitted January 20, 1871, and February 8, 1872.

The first appropriation specifically applicable to the Cumberland River above Nashville was made by the act of August 14, 1876.

This open-channel scheme of improvement, or old project, resulted in giving increased depths at several of the principal obstructions, thus securing a longer and safer period of navigation. Under this project and its modifications appropriations aggregating $346,000 were made and expended.

The project for the canalization of the Cumberland River above Nashville, based on reports of an examination and survey in 1882

and 1883, was adopted by the river and harbor act of August 5, 1886.

507 This scheme of improvement provided for the construction of 22 locks and dams below Burnside, Ky., and 6 locks and dams at Smith shoals, above Burnside, the intention being to provide a complete system of lockage from Nashville, Tenn., to Rockcastle River, so as to afford a channel depth of 6 feet, the locks to be 52 feet wide and 280 feet long, with lifts varying from 10 to 12 feet, at an estimated cost of $8,500,000.

On February 26, 1906, the Board of Engineers for Rivers and Harbors reported on the project of canalization as follows:

The Board is of the opinion that the regulation of the river and * * * the completion of Locks and Dams 3, 4, 5, 6, and 7 above Nashville, so as to carry the improvement of the river from its mouth to Carthage, Tenn., is worthy of being continued by the United States, but that the construction of the locks and dams proposed between Carthage and Burnside, except No. 21, now under contract, is not at present justified by the commerce involved.

The river and harbor act of March 2, 1907, adopted the modified project for completing the improvement in accordance with this report by providing for the completion of Locks and Dams Nos. 3, 4, 5, 6, and 7 at an additional expenditure of $550,000, thus reducing the cost of the project as modified to $2,769,000, increased in the report for 1908, page 1690, to $2,854,000. The entire amount so authorized has been appropriated.

The river and harbor act of March 3, 1905, authorized the Cumberland River Improvement Company, of Kentucky, to improve the Cumberland River and tributaries (including the South Fork) above Burnside, Ky., at its own expense, by the construction of the necessary locks and dams under Government supervision. The corporation is granted the use of the resulting water power, subject to the terms of the act, and is required to commence work within eighteen months after the completion of Lock No. 21.

The district officer, in the appendix to this report, recommends that an additional sum of $85,000 be appropriated on account of Locks 3 to 7, to be applied in placing necessary bank protection and constructing the lock houses at Locks 6 and 7, channel excavation between Locks 4 and 7, and to provide for the acquisition of the land necessary for a boat yard and ways for the repairs of floating plant. His recommendation is concurred in. It is further recommended that the balance now remaining on hand from the river and harbor act of March 3, 1905, for the completion of Lock and Dam No. 2, viz, $1,647.90, be made available for and applied in part fulfillment of the above estimate of $85,000.

Under the project of canalization appropriations and allotments aggregating $2,874,000 have been made; $569.50 have been received from recoveries, sales, etc., making a total of $2,874,569.50. Of this amount $52,036.95 is chargeable to maintenance, leaving $2,822,-532.55 applicable to works of improvement. The total expenditures under this project to June 30, 1910, amount to $2,651,429.04, of which sum about $36,539.15 was applied to maintenance.

The expenditures have resulted in an improved channel way by the periodical removal of snags and other surface obstructions; the completion and operation of Lock and Dam No. 1 November 26, 1904 (2.5 miles below Nashville); Lock and Dam No. 2
508 October 9, 1907 (9 miles above Nashville); Lock and Dam No. 3 October 15, 1908 (26 miles above Nashville); Lock and Dam No. 4 November 17, 1909 (44.7 miles above Nashville); Lock and Dam No. 5 October 18, 1909 (72 miles above Nashville); the completion of the masonry of the docks and abutments of Dams Nos. 6 and 7 (89 and 106.6 miles above Nashville), and the erections of the lock gates at these structures; the purchase of the lumber for Dams 6 and 7; the partial construction of Lock and Dam No. 21 (294¼ miles above Nashville) and contingencies pertaining to the entire improvement. The expenditures also include the cost of selecting sites for the locks of the Smith Shoals system above Burnside, the purchase of the site for the abutment of Dam 8 (125.2 miles above Nashville), and of the site for Lock and Dam No. 22 (320.2 miles above Nashville). The present project on the Cumberland River above Nashville does not contemplate further canalization of the river except finishing the locks and dams now under way.

The completion of Locks and Dams Nos. 1 to 5 has resulted in a good harbor at Nashville and also in affording 6-foot navigation the year round for a distance of 90 miles above Nashville. A number of new boats and barges have been placed in commission since the completion of the improvement. It is expected to complete Dams 6 and 7 during the coming working season, thus affording a permanent 6-foot channel from Nashville to Carthage and the Caney Fork River, a distance of about 125 miles. When these locks are in operation the effect of the project on freight rates will be more fully apparent.

The expenditures during the past fiscal year were applied principally to the completion and placing in operation of Locks and Dams 4 and 5, including the construction of two lock houses at Lock 4 and the partial construction of two lock houses at Lock 5; the erection of the lock gates and maneuvering machinery at Locks 6 and 7, under contract; the purchase of the lumber for Dams 6 and 7 (about 75 per cent delivered); quarrying stone for dam construction and completion of the guide walls at Locks 6 and 7, and construction of a snag boat and gasoline tender, and the completion of the lock walls and guide wall at Lock 21.

For the statement concerning the annulment of the contract for constructing Lock and Dam No. 21, see the Report of the Chief of Engineers for 1908, page 1689.

The river and harbor act of June 25, 1910, appropriated $85,000 for the completion of Lock and Dam No. 21, provided that no part of the appropriation be expended until the Secretary of War has received satisfactory assurance that local interests will provide a suitable landing place convenient to the city of Burnside, which shall be open forever to the public on just and equal terms.

The Cumberland River is navigable usually from Nashville to Burnside, Ky., 325 miles, for steamboats drawing not more than 3 feet from four to six months of each year, and for boats of greater

draft from two to three months. The fall is 223 feet, or about 8 inches per mile.

From Nashville to Caney Fork River (Carthage, 116 miles) the river is navigable for steamboats of 2½ feet draft from six
509 to eight months, and for those of greater draft four or five months. Steamboats of light draft can ascend to Burkesville, 236 miles above Nashville, for from five to seven months and larger boats four or five months.

The head of navigation is Burnside, Ky., for steamers and other craft. This section is considered navigable for rafting and logging for about 35 miles above Burnside.

The amount expended for maintenance during the past fiscal year was applied to the partial payment for the construction of a snag boat and a gasoline tender.

It is proposed to apply the amount required for expenditure in the fiscal year 1912 to the completion of Locks and Dams Nos. 6 and 7, channel excavation between Locks Nos. 4 and 7, and necessary contingencies. The funds are needed to make the improvement available for the needs of commerce and for maintaining the channel of the river in a navigable condition.

The commerce of the Cumberland River above Nashville for the calender year 1909, as nearly as could be ascertained, aggregated 225,074 short tons, having an estimated value of about $7,224,779; passengers carried, 21,773. The tonnage consisted mainly of timber and farm products and general merchandise.

For reference to surveys, see page 495, Annual Report of Chief of Engineers, 1906.

The district engineer, in the appendix, invites attention to an aggravation in the obstruction to traffic offered at a ford across Spencers Creek, in Wilson County, Tenn., by reason of the higher water level in the Cumberland River caused by the construction of Dam No. 3.

July 1, 1909, balance unexpended		$401,382.68
Received on account sales, condemned property		76.35
Amount appropriated by river and harbor act approved June 25, 1910		95,000.00
		496,459.03
June 30, 1910, amount expended during fiscal year:		
For works of improvement	$268,343.57	
For maintenance of improvement	4,975.00	
		273,318.57
July 1, 1910, balance unexpended		223,140.46
July 1, 1910, outstanding liabilities		16,110.83
July 1, 1910, balance available		207,029.63
July 1, 1910, amount covered by uncompleted contracts		$16,424.57
Amount (estimated) required for completion of existing project		*a* 85,000.00
Amount required for expenditure in fiscal year ending June 30, 1912, for works of improvement		*a* 85,000.00

Submitted in compliance with requirements of sundry civil act of June 4, 1897.

(See Appendix B B 2.)

3. Operating and care of locks and dams on Cumberland River.—Six locks are now in operation: Lock A, the first of the series below Nashville, and Locks 1, 2, 3, 4, and 5 of the series above
510 Nashville.

They have an available length of 280 feet, a clear width of 52 feet between walls, and a depth of 6½ feet on miter sills at low water, except at lower miter sill of Lock A, where the present low-water depth is only 1 foot. This depth will be increased to 6½ feet by the construction of the next lock below.

The first allotment from the indefinite appropriation of July 5, 1884, for the operation and care of these locks was made June 26, 1905.

During the calendar year 1909 the tonnage passing the locks now in operation was as follows, as nearly as could be ascertained: Lock A, 97,176 short tons; Lock No. 1, 87,546 short tons; Lock No. 2, 138,985 short tons; Lock No. 3, 117,172 short tons; Lock No. 4, 525 short tons (since November 17, 1909); Lock No. 5, 448 short tons (since October 18, 1909).

The funds expended were applied to the repairs of dam No. 3 with concrete; constructing of a 10-inch suction dredge for pumping out lock pits, etc.; operating and care of the locks and dams, and necessary contingencies.

The amount expended to June 30, 1910, was $94,033.14, of which $33,055.73 were expended during the past fiscal year.

(See Appendix B B 3.)

4. Caney Fork River, Tennessee.—For the usual information relative to this stream reference is made to the last annual report, pages 591-592. There was no operations and no expenditures during the past fiscal year. The balance available, $172.42, is on deposit in the United States Treasury, against which there are no outstanding obligations. On page 592 of the last annual report it was stated that no further appropriations under this project were warranted. Until further action is taken by Congress, this work will be dropped.

(See Appendix B B 4.)

Examinations Made in Compliance With River and Harbor Act Approved March 3, 1909.

Reports on preliminary examinations required by the river and harbor act of March 3, 1909, of the following localities within this district were duly submitted by the district officer. They were reviewed by the Board of Engineers for Rivers and Harbors, pursuant to law, and were transmitted to Congress and printed in documents as indicated:

1. Preliminary examination of Obey River, Tennessee.—Report dated June 22, 1909, is printed in House Document No. 319, Sixty-first Congress, second session. The locality is not considered worthy of improvement by the General Government at the present time.

2. Preliminary examination of Cumberland River from Lock No. 7, below Carthage, Tenn., to Lock No. 21, below Burnside, Ky.—Report dated June 17, 1909, is printed in House Document No. 632,

Sixty-first Congress, second session. The improvement is not considered worthy of being undertaken by the General Government in the manner proposed, or until a 6-foot navigation is provided in the river below Nashville by means of locks and dams yet to be provided for by Congress.

511 3. Preliminary examination of Caney Fork, Tennessee, from its mouth for a distance of 80 miles up the same.—Report dated June 22, 1909, is printed in House Document No. 693, Sixty-first Congress, second session. The locality is not considered worthy of improvement by the General Government at the present time.

* * * * * * *

APPENDIX B B.

Improvement of Rivers and Harbors in the Nashville, Tennessee, District.

Report of Maj. Wm. W. Harts, Corps of Engineers, Officer in Charge, for the Fiscal Year Ending June 30, 1910.

Improvements.

1. Obion and Forked Deer rivers, Tennessee.
2. Cumberland River, Tennessee and Kentucky.
3. Operating and care of locks and dams on Cumberland River, Tennessee.

ENGINEER OFFICE, UNITED STATES ARMY,
NASHVILLE, TENN., *July* 18, 1910.

SIR: I have the honor to transmit herewith the annual report upon the river improvements in my charge relating to the Nashville, Tenn., district for the fiscal year ending June 30, 1910.

Very respectfully,

WM. W. HARTS,
Major, Corps of Engineers.

The Chief of Engineers, U. S. Army.

B B 1.

Improvement of Obion and Forked Deer River-, Tennessee.

(A) Obion River.

No active work was done owing to lack of sufficient funds. The sum of $120.45 was expended during the past fiscal year, which was applied to care of plant.

In view of the cost of the extensive repairs to the floating plant and snagging outfit now found necessary to further carry on this improvement, and in view of the meager benefits resulting from this work in the past, it is not believed that further appropriations under this project are warranted.

About nine-tenths of the commerce consists of timber products floated out at high water, for which the works of improvement are not of much benefit.

July 13, 1892	$7,500.00
August 18, 1894	7,500.00
June 3, 1896	6,000.00
March 3, 1899	2,500.00
June 13, 1902 (allotment dated July 7, 1902)	2,500.00
March 3, 1905 (allotment dated Apr. 15, 1905)	1,700.00
March 2, 1907 (allotment dated Mar. 27, 1907)	1,700.00
June 25, 1910 (allotment)	218.50
Total	29,618.50

Commercial Statistics from January 1 to December 31, 1909.

Season of navigation, 1909.—Opened March 1; closed June 15.

Vessel Classification.

Registered steamers (American)	1
Net registered tonnage	11
Passengers	18

Freight Traffic.

Articles.	Amount in customary unit.	Amount in short tons.	Valuation.	Average haul for distance freight was carried. (miles).
Logs	3,000,000 feet b. m.	6,000	$54,000	a 36
Lumber	500,400 feet b. m.	1,112	15,568	
Live stock, large	8 head	4	1,040	
Other farm products		5	100	24
General merchandise		7	1,050	
Total		7,128	71,758	

a Rafted.

Rate per ton-mile not obtainable this season.

(B) Forked Deer River.

No work was done during the past fiscal year, owing to lack of sufficieint funds. The sum of $120.45 was expended, which was applied to care of floating plant.

In view of the cost of the extensive repairs to the floating plant and snagging outfit now found necessary to further carry on this improvement, and in view of the meager benefits resulting from this work in the past, it is not believed that further appropriations under this project are warranted.

About nine-tenths of the commerce consists of timber products floated out at high water, for which the works of improvement are not of much benefit.

513

Appropriations.

Old project (pp. 315-316, H. Doc. No. 421, 57th Cong., 2d sess.)		$25,000.00
Present project, by act of—		
June 3, 1896	$1,000.00	
June 3, 1896, for North Fork from Dyersburg to Mississippi River	5,000.00	
March 3, 1899	2,000.00	
June 13, 1902 (allotment, dated July 7, 1902)	2,000.00	
March 3, 1905 (allotment, dated Apr. 15, 1905)	1,300.00	
March 2, 1907 (allotment, dated Mar. 27, 1907)	1,300.00	
June 25, 1910 (allotment)	218.50	
		12,818.50
Total		37,818.50

Commercial Statistics.

Season of navigation, 1909.—Opened February 15; closed July 15.

Vessel Classification.

Registered steamers (American)	2
Net registered tonnage	71
Passengers	201

Freight Traffic.

Articles	Amount, in customary unit.	Amount, in short tons.	Valuation.	Average haul for distance freight was carried (miles)
Timber products	1,752,500 feet b. m.	3,505	$31,570	*a* 6
Live stock, large	92 head	46	6,100	
Live stock, small	75 head	6	600	
Grain	1,815 bushels	51	1,275	29
Other farm products		28	2,881	
Miscellaneous		15	634	
General merchandise		30	4,500	
Total		3,681	47,560	

a Rafted.

Rate per ton-mile not obtainable this season.

Comparative Statement of Traffic on Obion and Forked Deer Rivers for Eight Years.

Calendar year.	Tons.	Calendar year.	Tons.
1902	117,415	1906	22,104
1903	22,576	1907	39,305
1904	60,286	1908	24,849
1905	56,285	1909	10,809

Improvement of Cumberland River, Tennessee and Kentucky.

(A) Below Nashville, Tenn. (193 Miles).

During the past fiscal year no active operations were carried on, owing to lack of available plant. The expenditures, viz., $4,773.33, were applied as stated on page 659 et seq., of the current summary.

The new snag boat will commence operations on this section as soon as work on the upper Cumberland is finished, which will be in about sixty days.

At least $5,000 per year should be provided for clearing the channel way of surface obstructions.

Estimate of Additional Funds Required.

Amount required for expenditure in fiscal year ending June 30, 1912:	
For works of improvement	$250,000
For maintenance of improvement	2,500
	a 252,500

a Exclusive of the balance unexpended July 1, 1910.

Submitted in compliance with requirements of sundry civil act of June 4, 1897, and of section 7 of the river and harbor act of 1899.

Appropriations.

Old project (p. 339, H. Doc. No. 421, 57th Cong., 2d sess.):		
Cumberland River, Tennessee and Kentucky (all expended below Nashville)		$155,000.00
Cumberland River below Nashville		305,000.00
New project for locks and dams, acts of—		
July 13, 1892	$40,000.00	
August 18, 1894	30,000.00	
June 3, 1896	80,000.00	
March 3, 1899	100,000.00	
Amended act of June 13, 1902	180,000.00	
March 3, 1905	10,000.00	
March 3, 1909 (maintenance), allotment dated April 1, 1909	10,000.00	
June 25, 1910 (locks and dams)	213,000.00	
June 25, 1910 (maintenance)	10,000.00	
		673,000.00
Total		1,133,000.00
Received from other sources		1,002.80
Grand total		1,134,002.80

Commercial Statistics.

Cumberland River Below Nashville, Tenn.

Season of navigation, 1909.—Open at beginning of year; closed July 31; reopened November 26.

515 *Vessel Classification.*

Registered steamers (American)	29
Net registered tonnage	3,668
Passengers	26,296

Cumberland River Below Nashville, Tenn., from January 1, to December 31, 1909.

[Open River.]

Freight Traffic.

Article.	Amount, in customary unit.	Amount in short tons.	Valuation.
Logs	1,203,885 feet B. M.	2,408	$21,672
Lumber	1,328,121 feet B. M.	2,951	41,314
Railroad ties	1,252,737	125,274	563,833
Other timber products		497	11,750
Tobacco	4,005 hogsheads	3,605	440,750
Grain	695,834 bushels	19,575	489,375
Live stock, large	3,579 head	1,790	218,760
Live stock, small	9,500 head	831	83,100
Other farm products		1,401	97,800
Fertilizers	82 tons	82	2,050
Iron, manufactured		128	4,864
Sand and gravel	10,943 cubic yards	16,414	8,207
Miscellaneous		49	158
General merchandise		18,113	2,740,200
Total		193,118	4,723,833

Average haul for distance freight was carried: Best obtainable information is that the average distance freight is hauled from Nashville is 130 miles (to Canton, Ky.). Nothing more accurate obtainable this season.

Rate per ton-mile not obtainable from transportation companies.

[For Commerce Passing Lock A, see Commercial Statistics, "Operating and Care," etc.]

Comparative Statement of Traffic for Eight Years.

Calendar year.	Tons.	Calendar year.	Tons.
1902	263,531	1906	223,899
1903	297,438	1907	300,810
1904	275,371	1908	259,734
1905	253,430	1909	193,118

(B) *Above Nashville, Tenn.* (357 *Miles*).

The amount expended under the existing project during the fiscal year ending June 30, 1910, was $273,318.57, the disbursements being distributed as follows:

Locks and Dams Nos. 3, 4, 5, 6, and 7:	
Lock No. 3	$1,918.51
Lock No. 4	55,940.11
Lock No. 5	31,161.20
Lock No. 6	44,202.13
Lock No. 7	46,921.13
	180,143.08
Lock and Dam No. 21	88,200.49
Maintenance	4,975.00
Total	273,318.57

516 The following is an account of the work done:

Lock No. 4 (44.7 miles above Nashville).—The working force was employed in placing the lock in operation. The contract with W. C. Rogers, of Hattiesburg, Miss., for lumber for the dam was terminated November 8, 1909. The dam, 454.6 feet long, was built at a total cost of $32,125.21. There was placed in the dam 520,137 feet, board measure, lumber, at $29.54 per thousand feet, board measure (partially paid for in previous fiscal year), at a cost of $4.48 for framing and placing; the cost of nails, boat spikes, and drift bolts was about $1.84 per thousand feet of lumber used. The plates for the crest of the dam were saved from the repairs at Lock A. Stone placed in the dam, 4,363 cubic yards (solid measurement), cost $1.01 per cubic yard, including 6 cents royalty. Stone quarried and placed above the dam for backing, 828 cubic yards (solid measurement), cost $1.60 per cubic yard for quarrying and $1.28 per cubic yard, including 5 cents royalty, for loading, towing, and placing. Heavy riprap quarried and placed on the bank below lock and abutment, 2,434 cubic yards (solid measurement), cost $1.42 per cubic yard, including 5 cents royalty for quarrying, and 55 cents per cubic yard for placing. Two lock houses were built, at an average cost of $2,687.14 each; a blacksmith shop was built, at a cost of $210; 231 cubic yards of concrete were placed on the terra plein as paving, at a cost of $6.23 per cubic yard.

Lock No. 5 (72 miles above Nashville).—The working force was engaged in completing the dam and putting the lock into operation. There were 10,935 cubic yards of sand and gravel dredged from the site of the dam, 505.85 feet long, at a cost of 14½ cents per cubic yard. The dam was completed at a total cost of $49,085.77, $23,428.35 being expended in the previous fiscal year. There were 705,792 feet, board measure, lumber used in constructing the dam, 483.060 feet, board measure, of which were placed during the past fiscal year, at a cost of $6.24 per thousand feet, board measure, for framing and placing; the drift bolts, nails, spikes, and plates cost about $2.48 per thousand feet, board measure. There were quarried 3,493 cubic yards (solid measurement) of stone for dam filling, at a cost of $1.12½ per cubic yard, including 2½ cents for royalty, and at a cost of 75 cents per cubic yard for loading, towing, and placing in the dam; 775 cubic yards of stone were quarried, loaded, towed and placed as backing to the dam, at about the same unit of cost; 5,000 cubic yards of gravel were dredged and deposited as backing to the dam, at a cost of 14 cents per cubic yard; about 400 cubic yards of stone were prepared for use in constructing lock houses and were placed in the walls, at a cost of $6 per cubic yard for all labor and material; 75 per cent of the masonry of the two lock houses under construction is completed; 1,370 cubic yards (solid measurement) of stone were quarried for riprap, at a cost of $1.25 per cubic yard, including 2½ cents for royalty; a brick foundation was put under the storehouse, at a cost of $174.

Lock No. 6 (89.6 miles above Nashville).—The working force was engaged in work preparatory to putting the lock into operation. The lock gates were erected during July, August, and September, 1909, under contract; the placing of the valves,

maneuvering appliances, etc., was completed by hired labor. Fifty feet of cofferdams were built on the lower end of the lock, at a cost of $4.92 per linear foot; 1,000 cubic yards of concrete were used in building the guard wall, at a cost of $7.479 per cubic yard for all labor and material; 464 cubic yards of concrete were placed at the lower end of the abutment to replace a portion of decayed timber crib, at a cost of $5.096 per cubic yard, including all items chargeable to it; 12,250 cubic yards of sand and gravel were dredged from the dam site, at a cost of 12½ cents per cubic yard; 9,350 cubic yards (solid measurement) of stone have been quarried for dam filling, at a cost of $1.06 per cubic yard; 481,135 feet b. m. of lumber for the dam have been delivered under contract with T. H. Johnston & Co., of Birmingham, Ala., at $31.45 per thousand feet.

Lock No. 7 (107 miles above Nashville).—The working force has been engaged with work preparatory to putting the lock into operation. The lock gates were erected under contract during September and October, 1909. A cofferdam, 50 feet long, was built at the lower end of the lock, at a cost of $12 per linear foot. The valves, operating mechanism, etc., were erected, at a cost of $1,228.07. A guard wall, containing 947.67 cubic yards of concrete, was built, at a total cost of $7.31 per cubic yard for all labor and material; 485 cubic yards of concrete were used to replace a portion of decayed timber crib below the abutment, at a total cost of $5.40 per cubic yard for all labor and material; 9,450 cubic yards of stripping were taken off the quarry, at a cost of 31 cents per cubic yard; 6,449 cubic yards (solid measurement) of stone were quarried, at a cost of 98½ cents per cubic yard. There were dredged 7,240 cubic yards of sand and gravel from the site of the dam, at a cost of 14 cents per cubic yard. A snag boat was constructed, 90 feet by 24 feet by 3 feet, at a total cost of $3,018.27. A gasoline tender, 75 feet by 15 feet by 2.6 feet, was built, at a total cost of $3,918.51, and minor plant was cared for and minor repairs made. There were received 314,500 feet b. m. of lumber for dam construction, at $30.75 per thousand feet, under contract with T. H. Johnston & Co., of Birmingham, Ala., dated January 15, 1910.

The steamers Cumberland, Henry and John were engaged during the fiscal year in towing supplies and materials for the entire improvement. The steamer Cumberland was sent to Paducah, Ky., in January, 1910, placed on ways, and repairs made to the hull, at a total cost of $3,286.75.

Lock No. 21 (294¼ miles above Nashville.)—This work was formerly under contract. For an account of the annulment, attention is invited to page 1689 of the Report of the Chief of Engineers for 1908. At the close of the fiscal year the status of the principal part of this work was as follows: The lock and guide walls, with the necessary excavation and embankment, are completed; the abutment of the dam is about 95 per cent completed; the work of grading the bank for riprapping is 75 per cent completed; riprap and stone filling for bank protection is 35 per cent completed; the lock
518 master's house is finished, costing about $4,700, and about 80 per cent of the lockman's dwelling is completed; a brick

storehouse is about 50 per cent finished; work on the dam has just begun. Taking into consideration the additional work remaining to be done, Lock and Dam No. 21 may be said to be about 65 per cent completed. Weather conditions seriously delayed the work.

The quantities and unit cost of the work during 1910 are given as far as practicable, viz:

Lock, abutment, etc.:		Quantity.	Rate per unit.
Earth excavation	cubic yards..	10,616.6	$0.365
Rock excavation	do....	204.4	1.654
Embankment	do....	4,297.8	.592
Concrete	do....	8,907.1	5.828
Riprap	do....	3,245.2	2.290
Stone filling	do....	1,594.2	2.089
Puddling	do....	97.0	1.306
Bolt holes	feet..	123.0	.538
Placing irons	pounds..	17,445.0	.00534
Dam:			
Rock excavation	cubic yards..	51.0	1.850
Concrete	do....	277.0	6.060
Guide wall:			
Earth excavation	do....	361.0	.356
Rock excavation	do....	50.1	2.267
Embankment	do....	1,467.8	.303
Concrete	do....	1,130.0	4.831

The completion of Lock and Dam No. 21 will back the water up beyond the junction of the two forks, which will add about 4 feet additional depth to what is now the ruling low-water stage at Burnside. This will make a harbor at this town very useful for the summer anchorage of boats when the remainder of the river is too low for navigation, besides affording excellent opportunities for the transportation of freight from the Queen and Crescent Railroad which crosses the river at this point.

The new snag boat was sent to Burnside, Ky., the head of navigation, in June, 1910, to begin the season's work of snagging. A working party is now being organized, and operations will be under way shortly after the close of the fiscal year.

An annual appropriation of at least $5,000 should be made for clearing the river above Nashville of surface obstructions in order to assist in maintaining its navigability.

An additional appropriation of $85,000 is recommended to finish the project for the completion of Locks and Dams Nos. 3, 4, 5, 6, and 7.

The estimate for the completion of this work was $550,000, which has already been appropriated (Annual Report of Chief of Engineers, 1905, p. 1730). Of this amount there remains on this date an available balance of about $44,000.

Locks and Dams 3, 4, and 5 have been completed and placed in operation. Locks and Dams Nos. 6 and 7 have been completed with the exception of the dams, the construction of the necessary lock

houses, and bank protection. It will also be necessary to do considerable channel excavation between Locks 4 and 7, and to provide for the acquisition of land necessary for a boat yard and ways for the repair of floating plant.

The available balance will be exhausted in the construction of Dams 6 and 7 and the completion of the lock houses at Lock 5, and necessary contingencies.

The estimate for the completion and putting into operation of Locks Nos. 1 to 7, inclusive, was submitted by Lieut. Col. M. B. Adams, Corps of Engineers, in Report of Chief of Engineers, 1899, pages 2245-2246, and the prices were based on those obtaining at that time. Since that estimate was submitted the price of labor and material has considerably advanced, and during the progress of the work it has been found necessary to largely increase the quantities of bank protection over those estimated for, as the banks washed more rapidly than was anticipated.

The following are the approximate amounts of the items making up the estimate, which also includes contingencies, viz:

Channel excavation	$25,000
Bank protection	20,000
Boat yard and ways	25,000
Four buildings	15,000
Total	85,000

Experience with the locks already in operation indicates that in the course of the next two or three years it will be necessary to raise the lock walls from 3 to 5 feet, except at Lock 5, where nothing will be required. After the completion of Locks 6 and 7 more definite information as to just what will be necessary will be available and the subject will be more fully considered hereafter.

The Cumberland River above Nashville between Locks 7 and 21 is not all worthy of radical improvement by locks and dams for the present, as the attendant expense does not appear to be plainly warranted by the commercial necessities.

Complaint has been made in a petition by citizens of Wilson County, Tenn., of the effect produced at a ford of a county road across Spencers Creek, about a mile above its mouth, by the backwater from Dam No. 3. Investigation shows that this ford was impassable at certain seasons of the year, due to high water for many years before the construction of the dam. Since construction the period when the ford is impassable has been increased. The petition urges construction of a bridge by the United States, but should the same be undertaken the Government should bear only a small part of the expense thereof, as the improvement accruing therefrom would be greatly in excess of the mere restoration of conditions existing prior to the construction of the dam.

Estimate of Additional Funds Required.

Amount required for expenditure in fiscal year ending June 30, 1912:	
For works of improvement	$85,000
For maintenance of improvement	2,500
	a 87,500

Submitted in compliance with requirements of sundry civil act of June 4, 1897, and of section 7 of the river and harbor act of 1899.

a Exclusive of the balance unexpended July 1, 1910.

Appropriations.

Old project (p. 339, H. Doc. 421, 57th Cong., 2d sess.)		$346,000.00
New project for a system of locks and dams from Nashville, Tenn., to head of Smith shoals, mouth of Rockcastle River, Kentucky:		
Act of—		
August 5, 1886	$75,000.00	
August 11, 1888	200,000.00	
September 19, 1890	250,000.00	
July 13, 1892	250,000.00	
August 18, 1894	200,000.00	
June 3, 1896	20,000.00	
June 4, 1897 (sundry civil act)	350,000.00	
July 1, 1898 (sundry civil act)	250,000.00	
March 3, 1899	100,000.00	
Amended act of June 13, 1902	200,000.00	
Act of—		
March 3, 1905	124,000.00	
June 30, 1906 (sundry civil act)	120,000.00	
March 2, 1907	150,000.00	
March 4, 1907 (sundry civil act)	30,000.00	
May 27, 1908 (sundry civil act)	200,000.00	
March 3, 1909 (maintenance), allotment dated April 1, 1909	10,000.00	
March 4, 1909 (sundry civil act)	250,000.00	
June 25, 1910 (maintenance)	10,000.00	
June 25, 1910 (Lock and Dam 21)	85,000.00	
		2,874,000.00
Total appropriated		3,220,000.00
Received from other sources		569.50
Grand total		3,220,569.50

Contracts in Force.

Improving Cumberland River Above Nashville, Tenn.

[Formal contracts.]

1. For construction, delivery, and erection of two steel lock gates, filling valves, etc., for Lock No. 21, at $17,900:
Contractor: Port Huron Shipbuilding Company, of Port Huron, Mich.
Date of contract: March 9, 1906.
Date of approval: March 16, 1906.
Date of beginning work: March, 1906.
Date of expiration: Forty available working days after completion of masonry necessary for erection.

2. For construction, delivery, and erection of two steel lock gates, filling valves, etc., for each of Locks 3 to 7, at $85,100:
Contractor: Penn Bridge Company, of Beaver Falls, Pa.
Date of contract: July 18, 1907.
Date of approval: July 31, 1907.
Date of beginning work: July, 1907.
Date of expiration: October 31, 1909.
Contract closed and terminated November, 1909.

3. For furnishing and delivering 699,164 feet b. m. yellow pine lumber for Dam 4, at $28.50 per thousand feet b. m.:
Contractor: W. C. Rodgers, of Hattiesburg, Miss.
Date of contract: May 12, 1909.
Date of approval: June 1, 1909.
Date of beginning work: May, 1909.
Date of expiration: June 30, 1909. (Time limit waived June 28, 1909.)
Contract closed and terminated November, 1909.

4. For furnishing and delivering 883,767 feet b. m. yellow pine lumber for Dams Nos. 6 and 7, at $31.45 and $30.75 per thousand feet b. m., respectively:
Contractor: T. H. Johnston & Co., of Birmingham, Ala.
Date of contract: January 28, 1910.
Date of approval: February 17, 1910.
Date of beginning work: March, 1910.
Date of expiration: Lock No. 7, March 15, 1910; Lock No. 6, May 1, 1910. (Time limit waived March 9, 1910.)

Commercial Statistics.

Cumberland River Above Nashville, Tenn.

Season of navigation, 1909.—Open at beginning of year; closed, July 31; reopened, December 8.

Vessel Classification.

Registered steamers (American)	31
Net registered tonnage	3,302
Passengers	21,773

Cumberland River Above Nashville, Tenn., from January 1 to December 31, 1909.

[Open river.]

Freight Traffic.

Article.	Amount, in customary units.	Amount, in short tons.	Valuation.
Logs	22,870,333 feet b. m.	45,741	$411,669
Lumber	13,650,883 feet b. m.	30,335	424,690
Railroad ties	90,133	9,013	40,558
Staves	7,042,508	17,609	352,180
Other timber products		3,115	27,447
Tobacco	5,865 hogsheads	5,279	791,850
Grain	216,553 bushels	6,125	153,125
Live stock:			
Large	792 head	396	39,600
Small	28,736 head	2,519	251,900
Other farm products		3,700	288,270
Fertilizers		500	12,500
Iron, manufactured		505	19,190
Sand and gravel	45,500 cubic yards	68,250	34,125
Lime and cement	9,100 barrels	1,365	11,375
Miscellaneous		1,200	3,000
General merchandise		29,422	4,413,300
Total		225,074	7,274,779

Average haul for distance freight was carried: From Nashville up the river the average haul is reported at 190 miles (to Celina, Tenn.); from Burnside, Ky., down, the average haul is 143 miles (to Butlers Landing). Nothing more accurate obtainable this season.

Rate per ton-mile not obtainable from transportation companies.

[For commerce passing Locks 1, 2, 3, 4, and 5 see commercial statistics, "Operating and care," etc.]

Comparative Statement of Traffic for Eight Years.

Calendar year.	Tons.	Calendar year.	Tons.
1902	192,270	1906	334,351
1903	304,462	1907	241,571
1904	242,112	1908	246,260
1905	382,807	1909	225,074

B B 3.

Operating and Care of Locks and Dams on the Cumberland River.

Besides operating the locks and the ordinary work of caring for the buildings and grounds, the following work was done:

Lock A.—A new gravel roof was put on the shed used for protecting machinery; dredged 1,090 cubic yards of mud and sand from lock chamber and upper approach, at a cost of 9 cents per cubic yard.

Lock No. 1.—Renewed and repaired the chains on the filling valves; 1,306 cubic yards of mud and sand were dredged from lock chamber and upper approach, at a cost of 9½ cents per cubic yard.

Lock No. 2.—Seven hundred and twenty cubic yards of mud and sand were dredged from the lock chamber, at a cost of cents per cubic yard.

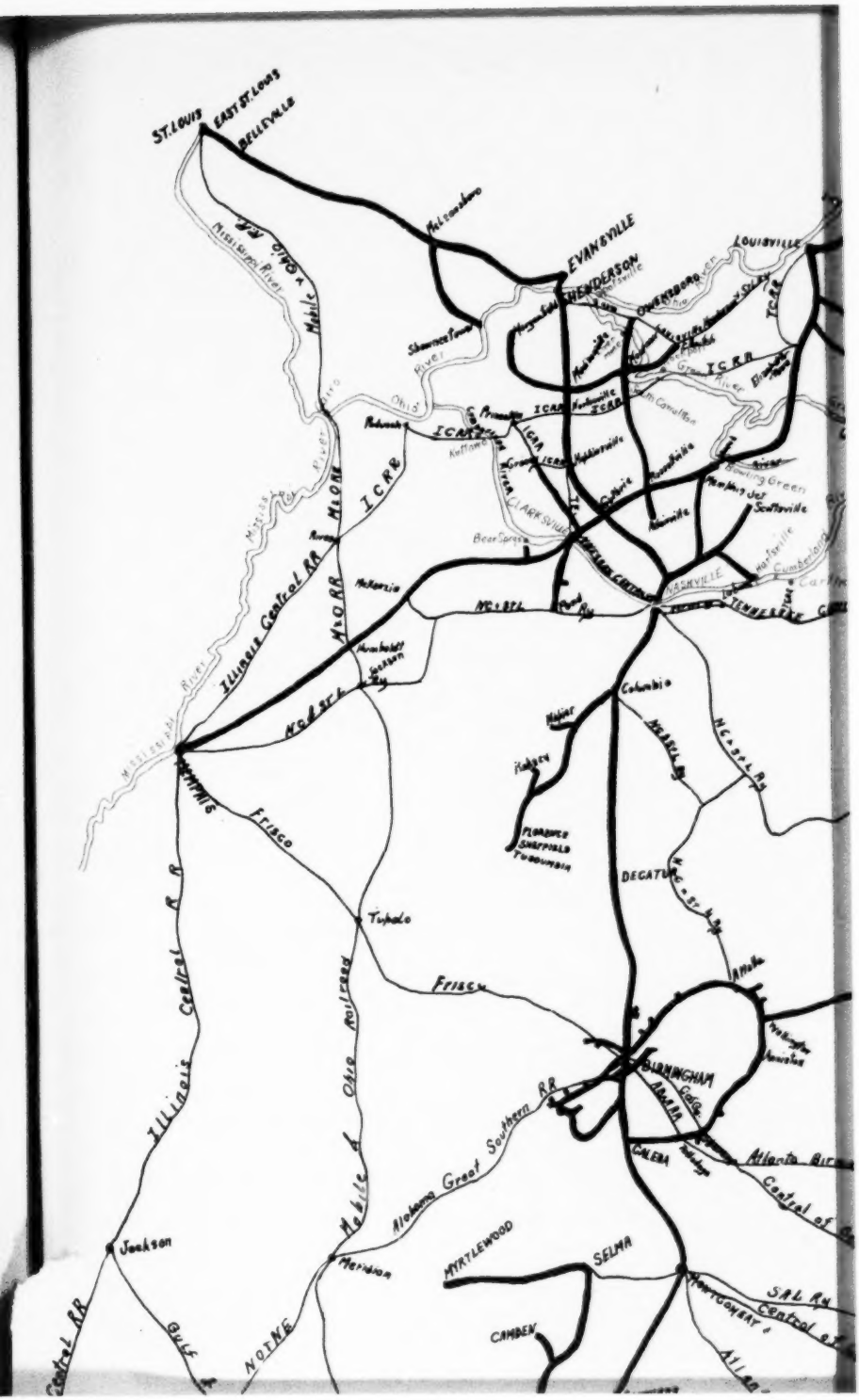
Lock No. 3.—The broken lower slope and apron of the dam were replaced with 1,118 cubic yards of concrete, at a total cost of $4.48 per cubic yard; 100 cubic yards of stone were placed on bank below the lock; filled the joints of paving on terre plein with cement mortar, at a total cost of $351.99.

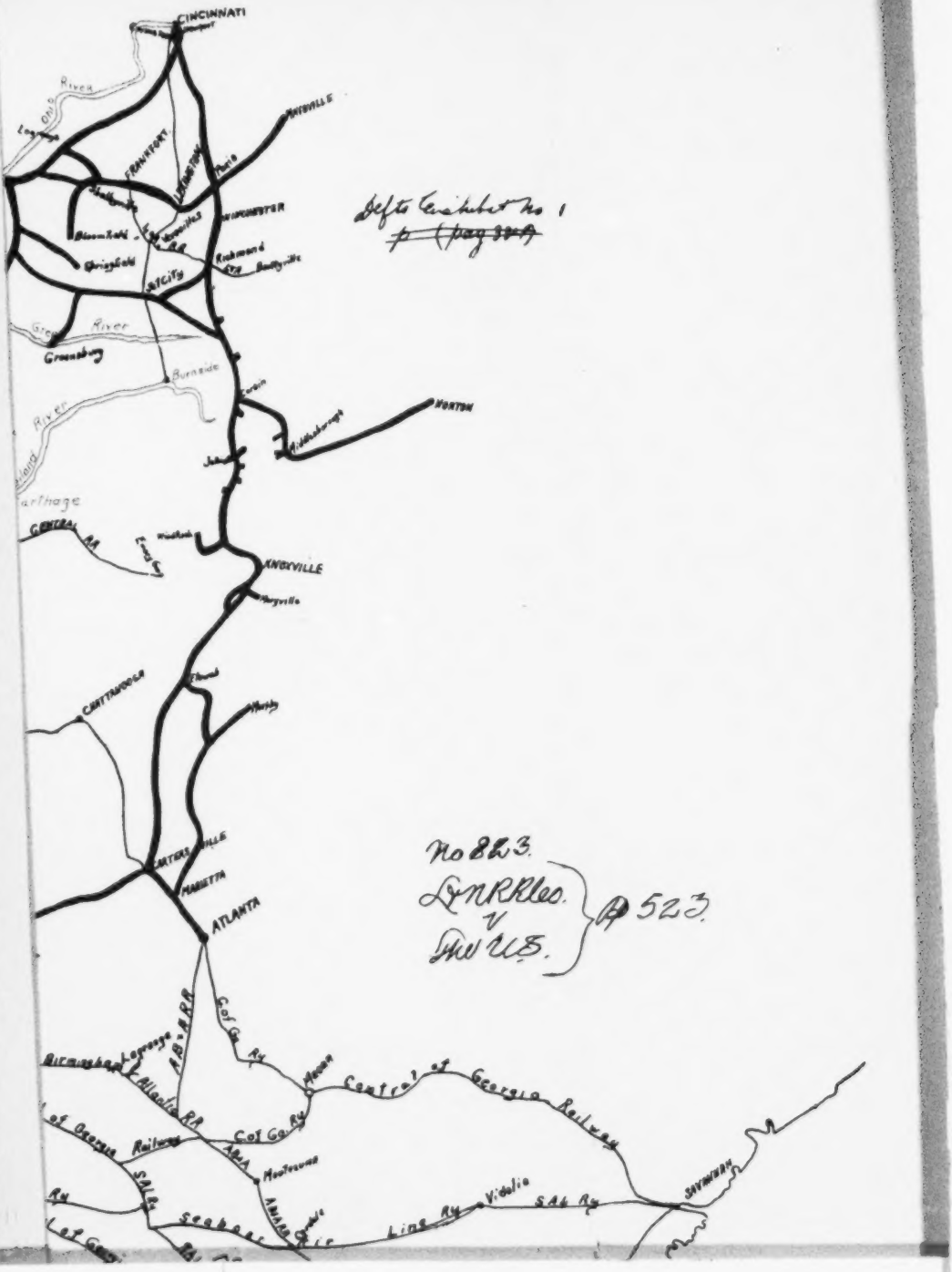
Lock No. 5.—Eleven hundred and seventy cubic yards of stone for bank protection were delivered and placed below the abutment at a cost of 42 cents per cubic yard; 500 cubic yards of mud were removed from the lock chamber, at a cost of 8 cents per cubic yard.

A 10-inch suction hydraulic dredge, 90 feet by 24 feet by 3.5 feet, was built at Muscle Shoals Canal, at a cost of $10,595.47, and is used for removing deposits from locks. The steamer Cumberland was repaired, at a total cost of $3,286.75, at the Paducah Marine Ways, Paducah, Ky., one-half the cost being charged to operating and care funds and one-half to lock and dam construction.

Allotments.

June 26, 1905	$14,000.00
July 18, 1906	6,014.87
August 13, 1907	28,888.23
August 1, 1908	14,681.23
September 9, 1908 (pump boat)	9,000.00
August 3, 1909	28,706.07
Received for damages	74.75


ST. LOUIS
EAST ST. LOUIS
BELLEVILLE
Mississippi River
Ohio River
Mobile & Ohio
EVANSVILLE
HENDERSON
LOUISVILLE
Owensboro
Shawneetown
ICRR
Illinois Central RR
Memphis
Friars
Tupelo
Columbia
DECATUR
Birmingham
Mobile & Ohio Railroad
Alabama Great Southern RR
Jackson
Meridian
MYRTLEWOOD
SELMA
CAMDEN
Gulf
NOTHE
Central RR



Defts Exhibit No 1
~~p (pag 324)~~

No 823.
L & N R R Co. v U.S.
} D 523.

Summary of Expenditures for Operating and Care of Locks and Dams on Cumberland River for Fiscal Year Ending June 30, 1910.

Services	$5,142.93
Repairs and dredging	13,333.19
Supplies	340.82
Subsistence	841.46
Pump boat	10,505.47
Office expenses and contingencies	2,792.86
Total	33,055.73

Commercial Statistics.

Statement of Traffic Passing Locks on Cumberland River During Calendar Year 1909.

	Lock 1.	Lock 2.	Lock 3.	Lock 4.a	Lock 5.b	Lock A.
Total lockages.....number..	554	1,311	1,044	30	33	561
Craft:						
Packets .....do....	257	155	134	3	4	234
Towboats .....do....	176	66	40	3	3	90
Government boats .....do....	31	56	96	9	5	9
Barges .....do....	378	258	140	13	8	256
Sand dredges .....do....	99	86	23	3	...	3
Small craft .....do....	230	196	74	8	13	188
Rafts .....do....	117	750	649	3	5	13
Cargo:						
Logs .....tons..	6,797	39,448	42,511	213	99	286
Lumber .....do....	595	7,990	5,620	.....	.....	248
Railroad ties.....do....	32,167	31,611	23,617	.....	.....	62,365
Poles, telegraph and telephones.....do....	40	20,834	16,744	.....	.....	18
Staves .....do....	112	1,231	735	.....	.....	4
Other timber products....do....	391	535	396	.....	34	80
Tobacco .....do....	202	2,847	3,399	.....	.....	266
Grain .....do....	18,287	2,689	2,673	.....	.....	22,829
Live stock:						
Large .....do....	900	348	291	14	13	951
Small .....do....	533	1,975	1,839	36	36	1,364
Other farm products.....do....	834	908	680	17	17	1,077
Sand and Gravel.....do....	15,438	14,597	2,602	.....	.....	.....
Lime and cement.....do....	39	490	1,351	.....	2	23
Wood .....do....	5,612	.....	1,112	.....	.....	.....
Coal .....do....	66	860	882	.....	.....	846
Miscellaneous .....do....	404	195	58	5	5	131
General merchandise .....do....	5,129	12,427	12,662	240	242	6,688
Total	87,546	138,985	117,172	525	448	97,176
Passengers	6,494	9,616	2,632	42	31	7,571

a Opened to traffic November 17, 1909.
b Opened to traffic October 18, 1909.

[Endorsed:] Interstate Commerce Commission Docket No. 4310. Exhibit No. 2. Witness, M. H. Crump. —— —— Complainants. Date Nov. 27, 1911. Steno. Beall.

(Here follows map Defendant's Exhibit No. 1, marked page 570.)

(Here follows map marked 1, 523)

[Endorsed:] Interstate Commerce Commission Docket No. 4310. Exhibit No. 1. Witness, Goodwyn. —— Defendants. Date Nov. 28, 1911. Steno. Beall.

CLASS RATES.

Louisville to Bowling Green, Ky.

	1	2	3	4	5	6	A	B	C	D	E	I	F	I	L	M	N
Present (G. F. O. 1635, I. C. C. A-11547)	55	47	42	37	32	30	30	30	20	15	30	30	40	25	20	15	10
Table A 114 miles	58	50	44	39	34	32	32	32	21	16	32	32	42	26	22	16	11

Interstate Commerce Commission. Docket No. 4310. Exhibit No. 2. Witness, Goodwyn. [Complainants]* Defendants. Date, Nov. 28/11. Steno. Beall.

[* Word in brackets erased in copy.]

[Stamped:] Interstate Commerce Commission. Docket No. 4310. Exhibit No. 3. Witness Goodwyn. [Complainants]* Defendants. Date, Nov. 28/11. Steno. Beall.

* Word in brackets erased in copy.

Commodity Rates, Louisville to Bowling Green, Ky.

In cents per 100 pounds.	Present (I.C.C.A-11547) G. F. O. 1535.	If class rates were applied.	Class rates table A for distance.
Agatewood, Granite or Enameled Ware, Iron or steel, L. C. L.	29	47	50
Agri. Implements, all kinds, C. L., not less than 20,000 lbs. to be charged for, owners to load and unload.	17½	20	22
Same, L. C. L.	28	42	44
Agri. Stone (Ground Limestone) C. L., min. wt. 30,000 lbs, per ton	1.80	30	32
Asphaltum and Asphalt Residuum, C.L., min. wt. 40,000 lbs.	*5	30	32
Apples and Pears, green, per barrel	32½	...	...
(C. L.)	....	†30 45	†32 48
(L. C. L.)	....	†47 70½	†50 75
Apples, Apricots, Nectarines, Peaches, Pears, and Blackberries, dried or evaporated, packed	27	...	...
In glass or earthenware, pkd. in bbls. or boxes, L. C. L.	....	47	50
In bags, L. C. L.	....	42	44
In bulk in bbls. or boxes, or in fibre or metal cans or cartons in bbls. or boxes, L. C. L.	....	42	44
In packages named, strt. or mixed C. L., min. wt. 30,000 lbs.	....	32	34
Bacon, hams or salt meat, in sacks or wood, L. C. L.	25	30	32
Same in bulk, sacks or wood, C. L.	17½	30	32
Beans or peas, dried, in boxes, bbls. or sacks, any quantity	27	...	...
N. O. S. in boxes, L. C. L.	....	47	50
N. O. S. in bbls. or sacks, L. C. L.	....	37	39
Same, C. L.	....	32	34

* Applies only on shipments from California points and New York, N. Y.
† Per 100 pounds.

In cents per 100 pounds.	Present.	Class.	Table A.
Beer, in wood or glass, packed, Straight or mixed, C. L.	17	30	32
Beer, in wood or glass, L. C. L.	27	37	39
Blank books, tablets and stationery, any quantity	37	...	...
Paper pads or tablets, and blank books, with flexible paper backs, in bdls., crates or boxes, L. C. L.	....	42	44
Same, C. L.	....	32	34
Stationery, N. O. S.	....	55	58
Boilers, steam power, L. C. L.	28	42	44
Boots and Shoes (including rubber shoes), any quantity	30	55	58

520

In cents per 100 pounds.	Present.	Class	Table A.
Bottles, fruit jars and window glass, C. L., min. wt. 24,000 lbs	26	...	...
Same, packed, L. C. L.	28	...	...
Glassware, common, consisting of bottles, lamp chimneys and fruit jars, in mixed carloads	....	32	34
Bottles, common, pkd., L. C. L.	....	42	44
Chimneys, packed, L. C. L.	....	47	50
Window glass, C. L.	....	32	34
Same, L. C. L.	....	42	44
Bottle Caps, any quantity	30	47	50
Boxes, N. O. S., empty, C. L., min. wt. 15,000 pounds	20	30	32
Brick, common or paving, C. L., min. wt. 30,000 pounds	5	10	11
574			
Brick, pressed or enameled, C. L., min. wt. 40,000 pounds	6	...	...
Pressed	....	10	11
Enameled	....	30	32
Brooms, C. L.	47	47	50
Same, L. C. L.	50	55	58
Buckets and tubs, sheet or galvanized iron, not nested, L. C. L.	30	55	58
Same, nested, L. C. L.	28	42	44
Buggies, K. D., boxed or well crated, L. C. L.	55	...	...
Not exceeding 54 inches in height	....	1.10	1.16
Exceeding 54 inches, but not 54 inches in height	....	82½	87
Not exceeding 34 inches in height	....	55	58
Cabbage, in sacks, crates, bbls. or in bulk, C. L.	17½	30	32
Cabbage, in sacks, crates or bbls., L. C. L.	20	30	32
Canned Goods, viz: Condensed milk, cove oysters, evaporated cream, fish, fruits, pork and beans, meats, shell fish, soups and broths, vegetables, sauer kraut, mustard (prepared), horse radish, catsup, table sauces in glass or earthenware or cans, packed or in wood, straight or mixed, C. L.	18½	...	...
Same, L. C. L.	28	...	...
Except Condensed Milk, Soups and Broths, Sauer kraut, etc., C. L.	....	32	34
L. C. L.	....	42	44
Condensed Milk, C. L.	....	32	34
Same, L. C. L.	....	42	44
Soups and Broths, C. L.	....	32	34
Same, L. C. L.	....	42	44
Sauer Kraut, in glass, earthenware, or metal cans, packed, or in bulk in kegs, bbls. or half bbls., strt. or mixed C. L.	....	30	32
Same in glass or earthenware, pkd., L. C. L.	....	47	50
Same, in metal cans, pkd., L. C. L.	....	42	44
Same in bulk in kegs, bbls. or half bbls., L. C. L.	....	37	39

In cents per 100 pounds.	Present.	Class.	Table A.
Mustard, viz: Prepared, in glass or earthenware, packed, L. C. L.	....	47	50
Same, C. L.	....	30	32
Prepared, in kegs, bbls., half bbls., drums or kits, L. C. L.	....	37	39
*Same, C. L.	....	30	32
Horse Radish, Prepared, viz: In glass or earthenware, pkd., L. C. L.	....	47	50
In kegs or bbls., L. C. L.	....	42	44
In glass or earthenware, pkd. or in kegs or bbls., C. L.	....	30	32
Sauces, Table, N. O. S., in glass or earthenware, packed in boxes or bbls., L. C. L.	....	47	50
In bulk in bbls. or kits, L. C. L.	....	42	44
In glass or earthenware, pkd. in bulk in bbls. or kits, C. L.	....	30	32
Cans, tin, C. L., min. wt. 15,000 lbs.	20	37	39
Cement, C. L.	8	15	16
Cement, Portland, in sacks, L. C. L.	11¼	30	32
Cement, Portland, in bbls., L. C. L., per bbl.	45	30	*32
Cement, except Portland, in bbls., per bbl.	40	*30	*32
Cheese, in boxes, any qty.	28	42	44
Coal and Coke, C. L., per ton 2,000 lbs.	1.60	Spl.	1.65
Coal Tar, L. C. L.	25	30	32
Coffee, C. L.	21	32	34
Same, L. C. L.	26	32	34
Coffins	29	...	...
Stained or not stained (not painted, varnished or cloth covered), completely wrapped.	....	55	58
Stained or varnished or not stained or varnished, wrapped and crated	....	47	50
Confectionery, viz: Candy, bonbons, maple sugar, popped corn and confectionery N. O. S., agreed to be of value of 6¢ per lb. and so expressed in bill of lading, any quantity.	27	...	...
C. L.	....	32	34
L. C. L.	....	37	39
Cottonseed Hulls, C. L., min. wt. 24,000 lbs. per ton 2,000 pounds	1.80	10	11
Cottonseed Meal, C. L., min. wt. 30,000 lbs. per ton 2,000 pounds	1.80	10	11
Crockery, earthenware (not china ware), jugware or stoneware, in slatted boxes, crates, bbls., tierces, casks or bdls., C. L.	21	30	32
Same, L. C. L.	27	37	39
Drugs, N. O. S.	30	55	58
Dry goods, clothing, hats, caps, suspenders, shirts, collars, hosiery, notions and millenery, any qty.	30	...	...

* Per 100 pounds.

In cents per 100 pounds.	Present.	Class.	Table A.
Calicoes, ginghams, etc.	....	42	44
Clothing, suspenders, etc.	....	55	58
Engines, C. L., min. wt. 20,000 pounds.	20	20	22
Same, L. C. L.	28	42	44
Fertilizers, C. L., min. wt. 30,000 pounds, per ton 2,000 pounds	1.80	2.00	2.20
Same, L. C. L.	2.16	2.40	2.64
Fish, dry salted, packed, C. L.	21½	42	44
Same, L. C. L.	29	42	44
Fish, pickled, in boxes, bbls, half bbls., kegs and kits, C. L.	21½	...	...
Same, L. C. L.	29	...	...
Pickled in boxes	....	42	44
Pickled in bbls., half bbls., kegs, kits or tubs, L. C. L.	....	32	34
Same, C. L.	....	30	32
Food preparations, cereal, N. O. S. viz:			
In kegs, barrels or drums, L. C. L.	26	32	34
In sacks or boxes, L. C. L.	27	37	39
Packed or in sacks, C. L.	25	30	32
Fruit: Pineapples, any quantity	29	47	50
Furniture, all kinds	35	See note.	
Glassware, common, C. L.	21	42	44
Same, L. C. L.	28	47	50
Grain and Grain Products, viz: Corn, C. L.	11	15	16
Oats, C. L.	11	15	16
Wheat, C. L.	11	15	16

NOTE.—No attempt made to compare. Attached find extract from Southern Classification showing range of articles covered by this item with classification applicable.

Gravestones, C. L.	28	...	...
Same, L. C. L.	30	...	...
Monuments, Gravestones and Tombstones, viz: Marble, Granite, Cement or Concrete, including parts of Monuments, Gravestones and Tombstones, unpacked, freight prepaid at option of initial carrier	....	1.10	1.16
Marble, Granite, Cement or Concrete, lettered or not lettered, including parts of Monuments, Gravestones or Tombstones, prepaid or guaranteed, viz: Agreed to be of value of not exceeding $1.00 per cubic foot, boxed or crated, L. C. L. (see General Rule 6)	....	37	39
Same, C. L., min. wt. 30,000 lbs.	....	32	34
Agreed to be of value of more than $1.00 and not exceeding $2.00 per cubic foot, boxed or crated, L. C. L. (See General Rule 6)	....	42	44
Same, C. L., min. wt. 30,000 lbs.	....	32	34
Agreed to be of value of more than $2.00 and not exceeding $4.00 per cubic foot, boxed or crated, L. C. L. (See General Rule 6)	....	47	50
Same, C. L., min. wt. 30,000 lbs.	....	37	39
Agreed to be of value of more than $4.00 per cubic foot	....	55	58
Groceries, N. O. S., C. L.	21½	47	50
Same, L. C. L.	29	47	50

In cents per 100 pounds.	Present.	Class.	Table A.
Hardware, axes, hinges, saws, chains, files, hammers, boxed, C. L.	24	...	...
Same, L. C. L.	29	...	...
Axes, C. L.	....	37	39
Same, L. C. L.	....	42	44
Hinges, C. L.	....	30	32
Same, L. C. L.	....	42	44
Saws: Band, packed	....	47	50
Buck, in bundles	....	55	58
Same in crates or boxes	....	47	50
Circular with frames	....	82½	87
Gin saws, packed	....	47	50
N. O. S., loose	....	82½	87
N. O. S., on or between boards	....	55	58
N. O. S., boxed	....	47	50
Chains, loose or pkd., C. L.	....	30	32
Same, L. C. L.	....	32	34
Files or rasps, iron or steel, boxed	....	47	50
Horse Shoes, any qty.	25	...	...
C. L.	....	25	26
L. C. L.	....	30	32
Ice, C. L., etc.	10	10	11
Same, packed, L. C. L.	20	30	32
Iron or Steel, bar, band, boiler, including unfinished boiler heads, strt. or flanged, hoop plate and rod, unpacked, C. L.	17½	25	26
Same, L. C. L.	20	25	26
Iron or Steel, sheet, any qty.	25	30	32
Iron Roofing, in boxes, crates or bundles, any qty.	25	30	32
Iron Safes, any qty.	28	...	...
S. U., each weighing 6000 lbs. and over, L. C. L.	....	55	58
S. U., each weighing less than 6000 lbs., L. C. L.	....	42	44
S. U., C. L.	....	37	39
K. D. or parts thereof, L. C. L.	....	42	44
Same, C. L.	....	32	34
Kraut, in kegs, barrels or half-bbls., C. L.	20	30	32
Same, L. C. L.	27	37	39
Lard and Lard Substitutes, except in tin cans not boxed	20	...	...
Same, L. C. L.	25	...	...
Lard, viz: In stoneware, unpacked	....	55	58
In glass, packed	....	55	58
In glass, unpacked; not taken.	....	...	...
In tin cans, unpacked	....	47	50
N. O. S., Packed	....	30	32
Lard Substitutes or Compounds, viz: Solids, viz: In stoneware, not packed, L. C. L.	....	55	58
In glass, packed, L. C. L.	....	47	50
In tin cans, not packed, L. C. L.	....	47	50
In tins cans or stoneware, pkd., or in bulk in bbls. or hhds., or in pails, firkins or tubs, L. C. L.	....	30	32
C. L.	....	30	32

In cents per 100 pounds.	Present.	Class.	Table A.
Lime and Wall Plaster, strt. or mixed C. L., min. wt. 30,000 lbs.	8	19	11
Lime, L. C. L., per bbl.	30	*30	*32
Live Stock: Horses, Mules, Cattle and Sheep, single deck in dollars per car.	$30.00	spl.	$33.00
Hogs, S. D. in dollars per car.	$35.00	spl.	$38.00
Sheep, D. D. in dollars per car.	$35.00	spl.	$33.00
Stock Cattle in dollars per car.	$28.00	spl.	$33.00
Stock Sheep, S. D., in dollars per car	$28.00	spl.	$33.00
Marble Dust, in bbls.	25	...	...
C. L.	....	30	32
L. C. L.	....	30	32
Matting and Carpets, any qty.	30	55	58
Molasses and Syrup, in cans, boxed or jacketed, or in kegs, kits, bbls., half bbls.	17½	32	34
Same, L. C. L.	25	32	34
Nails and Spikes, in kegs or double kegs, C. L.	17½	25	26
Same, L. C. L.	20	25	26
Oils, viz: Cocoa, cottonseed and lard, any qty.	28	...	...
Cocoa, in original pkgs.	....	47	50
Cocoa, in bbls.	....	42	44
Cottonseed, in bbls., L. C. L.	....	42	44
Same, C. L.	....	30	32
Lard, in cans, jacketed or boxed.	....	47	50
Lard, in bbls., L. C. L.	....	42	44
Lard, in bbls., C. L.	....	32	34
Linseed, in bbls., any quantity.	27	...	...
L. C. L.	....	37	39
C. L.	....	32	34
Refined coal, and petroleum products (except axle grease and nap-tha) in bbls., L. C. L.	28	...	...
L. C. L.	....	42	44
C. L.	....	32	34
Oranges and Lemons, C. L.	23	47	50
Same, L. C. L.	29	47	50
Paints and putty, viz: Paints, earth or metallic, dry, in sacks, barrels or casks, any quantity	26	...	...
Paints, liquid, in kegs (wooden or pressed steel), kits, barrels, casks or in tin kegs, with flat tops, enclosed in veneer or sheet metal jackets, any quantity	27	...	...
Putty, in cans, pails, buckets or galvanized iron drums, boxed, crated or packed in barrels, any quantity.	27	...	...
Earth or Metallic, dry, in sacks, bbls. or kits, L. C. L.	....	32	34
Same, C. L.	....	30	32
Liquid, etc., L. C. L.	....	37	39
Same, C. L.	....	32	34
Putty, etc., L. C. L.	....	37	39
Same, C. L.	....	32	34

*Per 100 lbs.

In cents per 100 pounds.	Present.	Class.	Table A.
Paper, wall, L. C. L.	29	47	50
Pickles, in buckets, or pails, L. C. L.	28	42	44
In glass, L. C. L.	29	47	50
In glass or wood, strt. or mixed C. L.	25	30	32
In kegs, bbls. or casks, L. C. L.	27	37	39
Pipe, cast iron water, C. L.	15	15	16
Potatoes, C. L.	17½	30	32
Same, L. C. L.	20	30	32
Powders, wash and soap, in boxes or bbls., value limited to 5 cents per pound, and so expressed in bill of lading, C. L., min. 24,000 lbs.	17½	30	32
Same, L. C. L.	25	30	32
Preserves, fruit butter and jellies, viz:			
In cans, boxed, L. C. L.	28	42	44
In glass or earthenware, L. C. L.	29	47	50
In cans, boxed, or in glass or earthenware, packed, C. L., min. wt. 24,000 lbs.	18½	32	34
Rice, cleaned, in sacks, boxes, kegs or bbls., C. L., min. wt. 24,000 pounds.	21	30	32
Same, L. C. L.	26	30	32
Roofing Material, felt and roofing paper, in bundles or in rolls, C. L.	26	30	32
Same, L. C. L.	28	32	34
Sand and Gravel, C. L., min. wt. 30,000 lbs.	5	10	11
Sand, flint, C. L., min. wt. 30,000 lbs.	10	30	32
Salt, C. L., min. wt. 30,000 lbs.	7½	15	16
Same, L. C. L.	14	...	...
In boxes, L. C. L.	....	37	39
In sacks or bbls., L. C. L.	....	30	32
Seed: Clover, C. L.	20	30	32
Same, L. C. L.	28	42	44
Garden, C. L.	27	37	39
Same, L. C. L.	29	47	50
Grass, C. L.	25	30	32
Same, L. C. L.	28	42	44
Soap, in boxes or bbls., value limited to 5 cents per lb. and so expressed in B./L., min. wt. 24,000 lbs.	17½	30	32
Same, L. C. L.	25	30	32
Soda, in sacks, boxes, kegs, bbls. or casks, C. L.	21½	...	...
Same, L. C. L.	26	...	...
Bicarbonate of, any qty.	....	32	34
Sal soda, or carbonate of soda, soda, any qty.	....	30	32
Starch, in bags, boxes or bbls., C. L.	21½	30	32
Same, L. C. L.	28	42	44
Stoves and ranges, N. O. S., cast iron (including sheet steel or sheet iron ranges), or with cast iron bases and tops, stove plates, stove furniture (cast or sheet iron or steel), and stove hollowware (not enameled, agate, or graniteware and not including stove pipe and stove pipe elbows), loose or packed, shipped with stoves, L. C. L.	28	42	44

In cents per 100 pounds.	Present.	Class.	Table A.
Same, straight or mixed, C. L. (not including alcohol, gas, gasoline, oil or vapor, but including stove boards and stove pipe, side seams not closed), minimum weight 20,000 lbs.	21	32	34
Sugar, in cartons or sacks, packed in boxes, half bbls., bbls., hhds. or double sacks, C. L.	15	32	34
Same, L. C. L.	25	32	34
Tin plate, in boxes, any qty.	27	...	...
L. C. L.	....	37	39
C. L.	....	30	32
Tin ware, packed, C. L., min. wt. 20,000 pounds	27	37	39
Same, L. C. L.	29	47	50
Trunks, empty, corded or wrapped, C. L.	40	53	58
Same, L. C. L.	50	55	58
Turpentine, in bbls., L. C. L.	28	42	44
Vegetables: Beets, carrots, onions, and turnips, packed or in sacks, C. L.	23	30	32
Same, L. C. L.	28	30	32
Vinegar, in wood, prepaid, C. L.	17½	30	32
Same, L. C. L.	25	30	32
Wagons, farm, K. D., L. C. L.	27	37	39
Whiskey, domestic wines and domestic brandies: In wood, actual weight O. R. L. agreed to be of value of 75¢ per gallon	25	30	32
In glass or stone, pkd., each package weighing not less than 20 pounds	35	47	50
Willowware	55	110	116
Wire, barbed, C. L.	20	25	26
Same, L. C. L.	25	25	26
Wire fencing, woven, in rolls, C. L., min. wt. 24,000 lbs.	20	30	32
Wire fencing, not woven, any qty.	26	32	34
Wire, plain, C. L.	17½	25	26
Same, L. C. L.	21	25	26
Wire, woven and spring mattresses and mattresses, N. O. S.	47	...	...
C. L.	....	42	44
L. C. L.: Hair, Wool or Feather, burlapped	....	82½	87
Spiral Spring, not compressed	....	110	116
Spiral Spring, in packages containing two or more, compressed not to exceed 3 inches per mattress in thickness	....	55	58
Spiral Spring, in packages containing six or more, compressed not to exceed 1 inch per mattress in thickness	....	47	50
Wire, entirely taken apart and K. D., boxed	....	47	50
Woven Wire	....	55	58
Spring, N. O. S.	....	82½	87
N. O. S., burlapped or packed	....	47	50

In cents per 100 pounds.	Present.	Class.	Table A.
Woodenware, viz: Buckets, pails or firkins, bottle covers, packed; pins, clothes and towel, packed; plates, dishes and trays, packed, tubs, N. O. S.; wash (not willowware) when in less than carload quantities.....	28	42	44
Bottle covers and wooden pins, N. O. S. in cases, L. C. L.....	30	42	44

Southern Classification No. 38.

	F.	Class if released.
Furnaces, viz.:		
Charcoal, cast iron		2
Charcoal, Soldering, sheet iron		1½
Clay, encased in sheet iron, pail-shaped, loose or packed, L. C. L.		4
Same, C. L.		6
Clay, N. O. S., pail-shaped, packed, L. C. L.....		4
Same, loose or packed, C. L.....		6
Cupola, S. U., L. C. L.....		3
Same, K. D., L. C. L.....		4
Same, S. U. or K. D., C. L.....		5
Heating, S. U. (not including Pipe or Ducts), L. C. L.....		1
Heating, K. D. (not including Pipe or Ducts), and Heating Furnace Castings, L. C. L.....		3
Heating, S. U. or K. D. (not including Pipe or Ducts), and Heating Furnace Castings, C. L.....		5
Plumbers' Blast		1
Smelting, S. U., L. C. L.....		3
Same, K. D., L. C. L.....		4
Same, S. U. or K. D., C. L.....		5
Furniture, C. L., viz.:		
Bed Slats, in bdls., crates or loose, min. wt. 24,000 lbs.....		6
Canopy Frames, wire, K. D., and Fixtures, min. wt. 24,000 lbs.		5
Chair and other Furniture Stuff or Stock, wooden, N. O. S., K. D., in the rough or in the white, and Chairs, K. D., in the white, min. wt. 24,000 lbs.....		5

Concerning Carrier's Risk Rates see Rule 1.

Southern Classification No. 38.

Item No.	F.	Class if released
	Furniture, C. L.—Continued.	
	Chair Seats, in bdls. or packed, min. wt. 20,000 lbs.	4
	•Chairs and Stools, Wooden, with Cane, Splint, Rattan, Reed, Bamboo, Leatheroid, Fiberoid, or Wooden Seats (not upholstered or padded), min. wt. 8,000 lbs.	4
	Chairs and Stools, N. O. S., min. wt. 8,000 lbs.	3
	•Fixtures (not including glazed Show or Display Cases and Cabinets, or Wall Cases, Clothing Cabinets or other Store Fittings or Fixtures, or Parts thereof, having glass tops, fronts, sides or doors, with or without glass tops, fronts, or sides or doors in place, or Iron and Steel Railings, Gratings and Partitions), for fitting Post Offices, Stores, Offices, Saloons, Banks, Barber Shops, etc., with or without mirrors (mirrors to be properly boxed), min. wt. 12,000 lbs.	3
27	•Frames, Chair, Settee or Lounge, in the white, S. U., min. wt. 8,000 lbs.	4
28	Picture Frames, K. D., or Picture Frame Material, finished, min. wt. 24,000 lbs.	4
29	Poles, Curtain, rough or in the white, min. wt. 24,000 lbs.	5
30	•Table Tops or Table Top Stock, in the rough, C. L., min. wt. 24,000 lbs.	6
31	Vault or Office, iron or steel, consisting of Filing Cabinets or Cases, Shelving, Counters, Roller Book Shelves and Tables, crated or boxed, min. wt. 24,000 lbs.	4
32	N. O. S., all kinds, finished or in the white, straight C. L., min. wt. 12,000 lbs.	3
33	N. O. S., all kinds, finished or in the white (taking 3d class or lower when in straight C. L.), mixed C. L., min. wt. 12,000 lbs.	3
	Concerning Carrier's Risk Rates see Rule 1.	
34	**Furniture, L. C. L. (see Notes), viz.:**	
	NOTE.—Dressers, Washstands, Chiffoniers, Bureaus, Sideboards, Buffets, Dressing Tables, etc., must have glass standards and toilets removed and crated.	
	NOTE.—The packing specifications for Furniture, L. C. L. will not apply on Chairs.	
	NOTE.—The following specifications for the different forms of packing, as referred to in the individual items, must be complied with:	
	Packed: see Rules 17 and 18 (*e*).	
	•Wrapped: All finished surfaces must be protected by heavy felt paper and pads or padding of excelsior or its equivalent; the tops, sides and fronts must also be completely covered by burlap or at least two thicknesses of paper weighing not less than 70 lbs. to the ream; in addition, the posts, corners and edges must be fully protected by pads.	
	Crated. Furniture must have all finished surfaces protected by at least three thicknesses of 70 lb. paper, and at least one thickness of heavy felt paper, and enclosed in crates of the following specifications:	
	Frames of crates must have lock corners and must be made of sound wood free from defects that materially lessen its strength, not less than 2 inches wide and ⅞ inch thick, and reinforced on top and front with wooden strips not less than 2 inches wide and ½ inch thick, not more than 6 inches apart, and at sides and back with at least one strip of the same dimensions.	
	Boxed: see Rule 17.	
35	Baby Walkers or Tenders, wrapped, crated or boxed	D1
36	Beds, Spring or Woven Wire: same as Mattresses.	
37	Bed Slats, wooden, packed or in bdls.	4
38	Bed slats, metal, packed or in bdls.	2
	Concerning Carrier's Risk Rates see Rule 1.	

Southern Classification No. 38.

Item No.	F.	Class if released.
	Furniture, L. C. L.—Continued.	
39	Bedsteads, Folding, boxed or crated (see Note)	1
	NOTE.—The above rating will apply also on Folding beds in combination with Wardrobes, Book Cases, Desks, etc.	
40	Bedsteads, Brass, K. D., wrapped, crated or boxed	2
41	Bedsteads, Iron, or Iron and Brass combined, wrapped with paper or cloth	2
	Bedsteads, N. O. S., K. D. (see Note)	2
	NOTE.—If packed singly, strips must be used at both sides of posts and across finished surfaces, securely tied or fastened to the bed; when shipped in pairs, all finished surfaces must be placed face to face; all bearings to be protected with pads or padding, and the package securely tied at the corners with heavy twine.	
	Bolster Rolls, K. D. flat, packed	1
	Bolster Rolls, N. O. S., packed	3T1
	Book Cases, N. O. S., S. U., wrapped, crated or boxed	1½
	Same, K. D., packed	1
	Book Cases, Sectional or Elastic, in tiers of not more than four sections each (with or without bases and tops), boxed.	1
	Book Cases, Sectional or Elastic, thoroughly taken apart and K. D. flat, boxed	2
	Book Cases and Desks, combination, wrapped or crated	1
	*Bookholders, S. U., packed	1½
	Same, K. D. flat, packed	1
	Bureaus, wrapped or crated	2
	Cabinets, Toilet, Medicine or Music, with glass panels or mirrors, packed	1½
	Same, without glass panels or mirrors, packed	1
	Cabinets, Wooden, revolving, for displaying hardware, packed.	1
	Canopy Frames, wire, K. D., and Fixtures, packed or in bdls.	2
	Canopy Frames, wooden, folding, packed or in bdls.	2
	*Castors, Roller, in boxes or bbls.	2
	Chair and other Furniture Stuff or Stock, wooden, N. O. S., K. D., in the white, in bdls., sacks, or packed	2
	Chair Seat Material, viz:	
	Cane, Rattan, Reed, Willow, Bamboo or Leather, packed or in bales	1
	Chair Seat Material, leatherboard, fibre or veneer, packed or in bales	2
	Chair Seats, packed or in bdls.	2
	Chair Splints, wooden, packed or in bales or bdls.	2
	*Chairs, Bamboo, Rattan, Reed, Willow or Fibre, wrapped or crated	D1
	Chairs, Barber, Dental, Folding, Reclining or Surgical, S. U., wrapped or packed	D1
	Same, K. D., or folded, wrapped or packed	1
29	Chairs, Camp, folding seat or swinging, packed or in bdls.	1
30	Chairs, Folding, Iron, jacked or in bdls.	2

Concerning Carrier's Risk Rates see Rule 1.

Southern Classification No. 38.

Item No.	F.	Class if released.
	Furniture, L. C. L.—Continued.	
31	Chairs, Opera or Church, K. D., packed	1
32	Chairs, Porch or Lawn, iron, or iron and wood combined, S. U.	2
33	Same, K. D., packed or in bdls.	3
34	Chairs, Rustic, wooden	1
35	Chairs and Stepladders, combination, packed or in bdls.	1½
36	*Chairs, Wooden or Metal Frames, with Cane, Splint, Rattan, Reed, Willow, Bamboo, Leather, Leatheroid, Wooden or Fibre Seats (not upholstered or padded and without rockers), S. U., unwrapped or wrapped with paper, tied in pairs, seat to seat (see Note)	1
	NOTE.—The above rating will apply on Rocking Chairs tied in pairs, seat to seat, with rockers detached and tied to backs or packed in bundles.	
37	Same, completely K. D., unwrapped or wrapped, packed in bdls.	2
38	Chairs, N. O. S., S. U.	1½
39	Chairs, N. O. S., completely K. D.	1
40	Chiffoniers, wrapped or crated	2
41	Chiffoniers and Wardrobes, combination, wrapped or crated	1
42	China Closets, wrapped and crated or boxed	1½
43	Church Furniture, wrapped or crated, S. U.	1½
44	Same, K. D., packed	2
45	Commodes, wrapped or packed	1
46	Cots, Woven Wire, S. U.	1½
47	Same, K. D. or folded	1
48	Cots, N. O. S., S. U.	1½
49	Cots, N. O. S., K. D.	2
50	Couches, metal, folding, K. D. or folded flat	2
51	Cradles or Cribs, and Mattresses (woven wire), combined, S. U., wrapped or crated	D1
52	Same, K. D. or folded flat, wrapped or crated	1
53	Cradles or Cribs, wrapped or crated, S. U.	D1
54	Same, K. D. or folded, packed	2
55	Cushions, Furniture, boxed or in bales	1
56	Desks and Seats, School, S. U., packed	1
57	Same, K. D. or folded, and Parts thereof, packed	3
58	Desks, N. O. S., wrapped or crated	1
59	Dressing Cases or Dressers, wrapped or crated	2
60	Easels, packed	1½
61	Filing Cabinets, Cases or Boxes, crated or boxed	1
	*Fixtures (not including glazed Show or Display Cases and Cabinets, or Wall Cases, Clothing Cabinets or other Store Fittings or Fixtures, or parts thereof, having glass tops, fronts, sides or doors, with or without glass tops, fronts, sides or doors in place, or Iron and Steel Railings, Grating and Partitions), for fitting Post-Offices, Stores, Offices, Saloons, Banks, Barber Shops, etc., with or without mirrors (mirrors to be properly boxed), wrapped, crated or boxed	1

Concerning Carrier's Risk Rates see Rule 1.

Southern Classification No. 38.

	F.	Class if released.
	Furniture, L. C. L.—Continued.	
	Frames, Lounge or Sofa, S. U., packed	1½
	Same, backs taken off, packed	2
	Frames, Picture or Mirror, crated or boxed	2
	Hassocks or Footstools, packed	1
	Hat Racks, folding, packed	1
	Hat Racks or Hall Stands, N. O. S., S. U., wrapped or crated	1½
	Same, K. D., or with tops detached, body wrapped and tops crated	1
	Ice Chests, K. D. flat, packed	3
	Lounges, with backs, S. U., crated	1½
	Same, with backs taken off	1
	Lounges, without backs, S. U. (see Note)	1
	*NOTE.—Lounges, if packed in pairs, must be thoroughly wrapped with paper and crated around each end with ¾ x 2 inch lumber. If shipped singly, lounges must be wrapped in burlap, or crated.	
	Marble, Slate, Granite or Stone Slabs, for furniture or mantels, packed	1
	Mattresses, viz:	
	Hair, Wool or Feather, burlapped	1½
	Spiral Spring, not compressed	D1
	Spiral Spring, in packages containing two or more, compressed not to exceed 3 inches per mattress in thickness	1
	Spiral Spring, in packages containing six or more, compressed not to exceed 1 inch per mattress in thickness	2
	Wire, entirely taken apart and K. D., boxed	2
	Woven Wire	1
	Spring, N. O. S.	1½
	N. O. S., burlapped or packed	2
	Poles, Curtain, wooden, or metal and Fixtures, packed	2
	Same, without Fixtures, packed	3
	Poles, Curtain, N. O. S., and Fixtures, packed	1
	Racks or Stands, Display, S. U., packed	1½
	Same, K. D., packed	1
30	Refrigerators, Refrigerator Lockers and Ice Chests, wrapped or packed	2
31	Safes or Cabinets, Meat or Kitchen, S. U., packed	1½
32	*Same, with legs, tops and bases separate, packed	1
33	Same, without legs, tops and bases separate, packed, or with legs detached, packed	2
34	Same, K. D. flat, packed	3
35	Settees; Chair rates	.....
36	Sideboards or Buffets, wrapped or crated	2
37	Sofas or Tete-a-Tetes, wrapped or crated	1½

Concerning Carrier's Risk Rates see Rule 1.

Southern Classification No. 38.

Item No.	F.	Class if released.
	Furniture, L. C. L.—Continued.	
38	Stands or Racks, Music, S. U., packed	1½
39	Same, K. D. flat, packed	1
40	Stools, Folding, store or counter, wrapped or packed	1
41	Stools, Piano, packed	1½
42	Stools, Piano, wrapped	1
43	Stools, N. O. S., packed	2
44	Table Legs, Slides, Leaves, Tops and Supports, packed	3
45	Table Slides, in the white, packed or in bdls	
46	*Tables, Bamboo, Rattan, Reed, Willow or Fibre, wrapped or packed	3T1
47	Tables, Billiard, and Billiard Table Beds, packed	1
48	Tables or Desks, mail distributing, with legs detached, packed	2
49	Tables, N. O. S., S. U., wrapped or crated	1½
50	Same, K. D. flat or folded flat, packed	2
51	Vault or Office, Iron or steel, consisting of Filing Cabinets or Cases, Shelving, Counters, Roller Book Shelves, and Tables, packed	2
52	Wardrobes, S. U., wrapped or crated	1½
53	Same, K. D. flat, packed	2
54	Washstands, wrapped or crated	2
55	Washstands, collapsible, folded flat, packed	3
598		
56	Washstands and Tables, combination, wrapped or crated	1
57	N. O. S., S. U., finished or in the white, wrapped or packed	1½
58	N. O. S., K. D., finished or in the white, wrapped or packed	1
59	Furniture trimmings, N. O. S., metal or glass, or combined metal and glass, packed	2
60	Furs, in trunks, strapped, or in boxes or bdls	D1
61	Furs, N. O. S.	3T1
62	*Fuses, boxed (see General Rule 34)	1
63	*Fuses, Railroad, boxed (see General Rule 34) (Ship's Option)	1½
64	Fustic, Extract, in bbls. or casks	1

Concerning Carrier's Risk Rates see Rule 1.

540

Filed Dec. 18, 1911.

Docket No. —.

Before the Interstate Commerce Commission.

Reg. 278,873.

I. C. C. Docket No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,
versus
LOUISVILLE AND NASHVILLE RAILROAD COMPANY et al.

Deposition of E. E. Bewley, to be Read as Evidence in Behalf of Complainant.

Filed Dec. 18, 1911.

Docket No. —.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION
vs.
LOUISVILLE AND NASHVILLE RAILROAD COMPANY et al.

Deposition for Complainant.

The deposition of Capt. E. W. Bewley, taken pursuant to agreement of parties as heretofore set forth in the stipulation as made a matter of record by Special Examiner Boyle, at 7:30 o'clock P. M., December 1st, 1911, at the law office of T. W. & R. C. P. Thomas, Neale Building, Bowling Green, Ky., to be read as evidence on behalf of complainant in the case of Bowling Green Business Men's Protective Association of Bowling Green, Ky., vs. Louisville & Nashville Railroad Company, et al., pending before the Interstate Commerce Commission, I. C. C. Docket No. 4310, T. W. & R. C. P. Thomas being present as attorneys for complainant and W. A. Colston as attorney for the Louisville & Nashville Railroad Company.

The witness being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Examined by T. W. Thomas, attorney for complainant:

Q. What is your name, age, residence and occupation?
A. E. W. Bewley, Bowling Green, Ky., occupation, steam boater.
Q. *Have* long have you been engaged in the steam boat business?

A. About 40 years.

541 Q. Did you ever have any connection with what is known as the Green and Barren River Navigation Company?

A. Yes sir.

Q. Did you ever operate any of their boats for them as captain or master on Green & Barren Rivers, if so for how long?

A. I did, for about 17 years.

Q. Where did these boats which you operated run from and to what points as the terminal points?

A. Between Bowling Green, Ky., and Evansville, Ind.

Q. What is the nature of navigation on Green & Barren Rivers, whether it is slack water or not.

A. Slack water navigation.

Q. How was the navigation upon said rivers and how is it now as to whether it is continuous or interrupted by low water or not?

A. Yes, might say it is continuous.

Q. Are you operating a boat now on the Green & Barren Rivers?

A. Yes.

Q. What boat is it and for what purpose do you operate the boat, and between what points?

A. Steamer Speed, between Bowling Green and Morgantown, Ky., carrying mail and passengers.

Q. What is the distance from Bowling Green to Morgantown? And does or does not that boat make a daily round trip from Bowling Green to Morgantown?

A. 36 miles. The Steamer Speed makes the round trip daily.

Q. The Green & Barren River Navigation Company operated its line of boats on these rivers while they held a lease from the state, did it or not, of the rivers and locks?

A. It did.

Q. Do you know for what period of time that lease was?

A. 30 years.

Q. Do you remember when they first leased it?

A. I think it was in 1870.

Q. Before the lease had quite expired, what became of the rivers, locks and dams so far as the state was concerned?

A. It was turned over to the United States Government.

Q. The state ceded the rivers with the locks and dams it had made to the United States Government subject to said lease?

A. Yes.

Q. Is it or not true that then the Government purchased the remaining balance of the lease from the Green & Barren River Navigation Co.?

A. Yes.

Q. Then the Green & Barren River Navigation Company went out of business did it not?

A. Yes.

Q. Can you fix about the year that was?

A. In 1888.

Q. After the Government took charge of the river, the river be-

came free did it not in so far as lockage and transportation were concerned, passing through the locks?

542 A. Yes.

Q. Did you operate a boat for any one or in connection with any one on the river after the navigation company went out of business and ceased to operate its line of boats, if so, what was the first boat you operated after that?

A. Yes, the first boat was the Steamer Evansville.

Q. Who owned that and for whom did you operate it?

A. Mr. R. J. Meyler.

Q. Were there any other boats in the river at that time besides the boats which Mr. Meyler was operating?

A. One other.

Q. What was that?

A. Steamer Blue Wing.

Q. Who owned and operated that?

A. Capt. R. T. Williams.

Q. These were passenger and freight boats were they not?

A. Yes.

Q. Your answer to the foregoing question did not refer to tow boats, only passenger and freight boats?

A. Yes sir.

Q. These boats made regular trips in the river trade carrying passengers and freight did they not?

A. Yes.

Q. Did the Steamer Evansville and the Steamer Blue Wing compete with each other in the river traffic and for the river traffic?

A. Yes.

Q. About when did the Evansville as operated by Mr. Meyler and the Blue Wing as operated by Captain Williams go out of the trade if you remember?

A. I think we operated the Evansville about two years.

Q. Was the Blue Wing operated when the Evansville ceased?

A. Yes.

Q. Who became the owner of the Evansville when she went out of trade, if you know?

A. It was sold to Captain J. F. Klein of Pittsburgh.

Q. Did you or not, a short time after the Evansville went out of trade, operate another boat known as the Steamer Gayoso, and if so, for whom did you operate it?

A. Yes, for Mr. Henry Ballantine.

Q. This was a passenger and freight boat operated between Evansville and Bowling Green was it not, in the regular trade?

A. Yes.

Q. Where was the Gayoso purchased?

A. Memphis, Tenn.

Q. In what character of trade had she been before she was brought here?

A. On the Mississippi and St. Francis rivers.

Q. If you recollect, what was her actual registered tonnage?

A. Her registered tonnage was 194 tons.

Q. What was her actual tonnage capacity?

A. About 275 tons.

543 Q. While the Gayoso was being operated by you were there any other boats being operated in this same trade, passenger and freight boats, by other parties; if so, by whom and please state the name of the boat?

A. By two other boats, City of Clarksville operated by Capt. William Server, the J. C. Keer operated by Capt. R. T. Williams, and later Steamer Evansville operated by Capt. Lee Howell.

Q. Was this Steamer Evansville operated by Capt. Howell the old Evansville returned to the trade or a new Evansville put in the trade?

A. The old Evansville returned to the trade.

Q. Were these boats named by you, the Gayoso, City of Clarksville, Kerr and Evansville operated independent of each other and in competition with each other?

A. They were.

Q. Which of the boats did Capt. Howell first acquire after acquiring the Evansville, of these boats named by you?

A. The Gayoso.

Q. Did the Kerr remain in the trade after the Gayoso was sold to Captain Howell?

A. Yes.

Q. Who sold the Gayoso to Captain Howell?

A. Mr. Henry Ballantine.

Q. Did Capt. Howell afterwards acquire the Kerr or did Capt. Williams and Capt. Howell go in together in the operation of the boats?

A. They went in together.

Q. What became of the Steamer City of Clarksville?

A. She was sold to some parties for the southern trade.

Q. Then the Steamer City of Clarksville went out of the trade and the Kerr went in with the Evansville and the Gayoso and this made the beginning, did it not of the Evansville & Bowling Green Packet Company?

A. Yes.

Q. What has become of the steamer Kerr? Do you know where it is now?

A. She is still running on Green and Barren Rivers and is called the Chaperone.

Q. The Chaperone which was formerly the Kerr, operates now between Bowling Green and upper Green River does it not, Mammoth Cave?

A. Yes.

Q. Is she owned now by the Evansville & Bowling Green Packet Co.?

A. Yes.

Q. What became of the Gayoso in reference to her name and all and where is she now?

A. The Gayoso was bought by Capt. Howell as already stated and her name changed to Park City.

Q. What finally became of her if you know?

544 A. She was sold to Capt. Williams of Louisville for the Kentucky River Trade.

Q. That was after she had operated some time in this trade under the name of the Park City, was it not?

A. Yes.

Q. Bowling Green is called the Park City is it not?

A. It is.

Q. What two freight and passenger boats now operate in the trade between Evansville and Bowling Green, Ky. and by whom are they owned and operated?

A. Evansville and Bowling Green, owned and operated by the Evansville & Bowling Green Packet Company?

Q. Is Capt. Lee Howell president of said company?

A. Yes.

Q. Who are the masters or captains of the two boats?

A. Captain Charles Sturgeon on the Bowling Green and Capt. William Williams on the Evansville.

Q. Is he a son of Capt. R. T. Williams you spoke of while ago?

A. Yes.

Q. Is he a brother of Mr. Jeff Williams, superintendent of the line at Evansville?

A. Yes.

Q. Is he also a brother of Edgar Williams who is the pilot on the Chaperone?

A. He is not on the Chaperone but Albert Williams is.

Q. Mr. Albert Williams is a son of R. T. Williams, is he or not?

A. Albert Williams is a nephew of Capt. R. T. Williams.

Q. After you ceased to operate the Gayoso did you act as agent a while in Bowling Green for the Evansville & Bowling Green Packet Co.?

A. Yes.

Q. Did you receive any instructions as to soliciting freight for said line as against the railroad or in competition with the railroad, or receive any instructions not to solicit any freight as against the railroad? State the fact about this.

A. I worked for them for a while. I received instructions not to solicit freight as against the L. & N. Railroad Company other than from Evansville proper.

Q. What do you mean by Evansville business proper?

A. I mean shipped from and beyond Evansville. Business coming out of Evansville and not from other points beyond Evansville. Not shipped through Evansville.

Q. In other words, you were not to solicit business which came from beyond Evansville but only that from Evansville?

A. Yes.

Q. How about that originated in Bowling Green, outgoing freight?

A. I was instructed not to solicit any freight for Louisville or any other points except Evansville.

545 Q. Did you have any agreement or understanding or contract as agent with any one at Franklin, Ky. in regard to the shipment of tobacco by hogshead by boat; if so, state in substance what it was?

A. Before I received instructions not to solicit business for Louisville, I contracted with Mr. Bryan of Franklin for his Louisville tobacco and received a lot for the boats. I received instructions from Capt. Howell not to take the tobacco. Finally we took 200 or 300 hogsheads that we had received. We then had orders from Capt. Howell not to receive any more.

Q. Was this tobacco brought by land from Franklin, Ky., 20 miles below here, by wagons, and delivered to the boats here?

A. Yes.

Q. Had you made a rate by which it could be carried by boat to Louisville which would pay the shippers at Franklin to haul the tobacco to Bowling Green to go to Louisville?

A. Yes.

Q. The rate had been made after a conference had it not, and if so, with whom?

A. After a conference between Capt. Lee Howell, Capt. R. T. Williams, Mr. Watkins of the I. C. Railroad Company, Mr. Hyde, of the Louisville & Evansville Packet Company, and Compton of the Louisville & Nashville Railroad Company, and Mr. Mordue of the Texas.

Q. You mean by the Texas the Henderson Railroad route?

A. Yes.

Q. When this rate was made, was it realized by the parties agreeing to it, other than yourself, that it would produce this tobacco traffic, if so, why were you ordered not to receive the tobacco afterwards?

A. I do not think that they realized that the rate agreed upon would meet the tobacco by river to Louisville.

Q. How long did you so act as agent for the Evansville & Bowling — Packet Company?

A. About two years.

Q. In addition to these freight lines and passenger lines of boats mentioned by you, was there not a good deal of towing by barges in Green and Barren Rivers carrying out timber traffic and traffic of that sort?

A. A great deal of timber was carried out by the tow boats.

Q. Was there or not formerly a great deal of coal carried by river in the days of the old Navigation Company brought to Bowling Green for instance?

A. Yes.

Q. Did or not the Green & Barren River Navigation Company keep two boats, the Longfellow and Houston Coombs, constantly engaged in towing in addition to their passenger and freight boats?

A. Yes.

Q. Long later after the Navigation Company had ceased to do business, did not the Aberdeen Coal Company operate a coal mine near Morgantown and do towing in the river?

A. It did.

546 Q. And others besides that, like the Green River Transportation Company?

A. Yes.

Q. Captain, did you, under a trade or contract with certain merchants of Bowling Green, operate the Steamer Sun between Bowling Green and Evansville and Evansvile and Bowling Green for a time?

A. I did.

Q. Was this about the year 1901?

A. Yes.

Q. How long did the Steamer Sun operate?

A. About eight months I think.

Q. The Steamer Sun put in effect a scale of rates by agreement with the merchants which were lower than the rates prevailing on the river by the other packet lines did it not?

A. Yes.

Q. This other packet line was the Evansville and Bowling Green Packet Company which is now operating on the river?

A. Yes.

Q. What was the effect of the operation of the Steamer Sun upon the freight rates of the Evansville & Bowling Green Packet Company, what did they do as to their freight rates after the Steamer Sun was put in the trade?

A. It was cut all to pieces.

Q. What was the result as to rates on the L. & N. Railroad—to haul by rail?

A. The rates were cut.

Q. Materially cut?

A. Very much.

Q. Is it not true, Captain, that you could get freight hauled for pretty near anything you wanted it?

A. It is and sometimes for nothing.

Q. The temptation became too strong for the shippers from whom you expected patronage for the boat and the Steamer Sun went out of business?

A. Yes.

Q. Captain, did you ever run on the Cumberland River at any time?

A. I made one season on the Cumberland River.

Q. Was that since the Sun was in trade here?

A. Yes.

Q. What do you mean by a season on the Cumberland, you don't speak of a season on the Green and Barren Rivers do you?

A. By reason of low water, they can only operate the boats on the Cumberland River six or eight months in the year.

Q. Where did you run to and from this season that you were on the Cumberland?

A. Between Evansville, Ind. and Nashville, Tenn.

Q. What boat did you operate?

A. J. B. Richardson.

Q. Of what line?

A. Of the Ryan line.

547 Q. How far is it by river from Evansville, Indiana to Nashville, Tennessee?

A. About 350 miles.

Q. How far is it from Evansville, Indiana to the mouth of the Cumberland River where it empties into the Ohio?

A. About 140 miles.

Q. Clarksville is between Nashville and the mouth of the Cumberland River is it not?

A. Yes.

Q. About how far from Nashville?

A. About 65 miles.

Q. How long did it take to make a trip from Evansville to Nashville or Nashville to Evansville by boat?

A. I made one round trip each week.

Q. How many round trips each week are made by Green and Barren Rivers to Evansville by the same boat?

A. Two round trips.

Q. Were there any other passenger and freight boats running in the Cumberland to Evansville and Nashville and return except the one you operated at this time?

A. No other between Evansville and Nashville. There was one other boat which went as far as Paducah.

Q. At this same time?

A. Yes.

Q. How far is Paducah below the mouth of the Cumberland on the Ohio?

A. About ten miles.

Q. How many trips did the Paducah boat make a week?

A. One round trip to Nashville. One round trip between Paducah and Clarksville.

Q. About what tonnage was the boat that you operated on?

A. About 350 registered tonnage.

Q. About what draft was this boat and how much water did it draw?

A. About 24 inches light.

Q. How much heavy?

A. Loaded 4½ feet.

Q. About what draft were these packet boats on Green River?

A. About 3 feet.

Q. Is it not true, Captain, that slack water stands about 4½ to 5 feet in the locks on Barren River?

A. About 4½ feet at the lowest stage.

Q. This boat then that you were operating in Nashville, you could not operate in that trade exceeding six or seven months in the year?

A. No, not longer than that.

Q. And even for lighter draft boats, did not the river close entirely by low water so that no passenger or freight boats would run during some months?

A. Yes.

548 Q. After the heavier draft boats went out the lighter boats could only run for a time then?

A. For a short time.

Q. Is that the practice in that river?

A. Yes.

Q. When a boat is tied up at the bank, is it not expensive to you in the way of watchman, depreciation as well as interest on the money invested, going on all the time while it is idle?

A. Yes.

Q. Which is the better traffic and better for the line of boats, the continuous traffic or one that is interrupted by such a low stage of water that it has to cease altogether?

A. Continuous traffic is better.

Q. Knowing the Green, Barren and Ohio River traffic for years as you say, and taking into consideration the Cumberland River and the fact that the traffic there is interrupted for a number of months so that the boats cannot run on the river, would you say as a river man, taking the average as a whole, that freight could be carried as cheaply by boats on Green and Barren Rivers or cheaper than it could on the Cumberland?

A. I would say that it could be carried as cheap or cheaper.

Q. What would you say, with normal conditions, where a boat could get and maintain and hold the traffic so she could have the patronage of the traffic, would be a fair average rate per hundred for which freight could be carried on Green and Barren Rivers, assuming the freight was normal and she could get the patronage?

A. If she could get a fair amount of business she could carry the freight at 15 cents per hundred from Bowling Green to Evansville.

Q. The boat that you operate now is not in competition with the Evansville and Bowling Green Packet Company, is it, being a short round trip and a mail and passenger boat?

A. No. We do not handle any freight.

Q. Has there been any competition in Green and Barren Rivers between Evansville and Bowling Green or between Bowling Green and Evansville by passenger steamers carrying freight since the Sun went out of the river?

A. Not by any steam boat.

Q. When you operated boats for the Green and Barren River Navigation Company did you have connecting rates and through rates which you could give from Cincinnati to Bowling Green, and Louisville to Bowling Green and other points north of Bowling Green which you could give to Bowling Green by river?

A. Yes.

Q. Well, are any such connecting or through rates now, or are they made by the Evansville and Bowling Green Packet Company to any shippers?

A. I think not.

Q. For a part of the time or all the time that you were their agent did they have such rates in existence, through and connecting rates?

A. No.

549 Q. While you were connected with the Green and Barren River Navigation Company, did the boats make Louisville from Bowling Green or do you know that they formerly did before

that time run from Bowling Green to Louisville and Louisville back, making regular trips?

A. They did.

Q. Did it make any of those trips while you were with the Green & Barren River Navigation Company or not?

A. For one year while I was with them.

Q. Did not the Green & Barren River Navigation Company, when it operated the steam boats, maintain connection with other boats on the river so it could make through rates?

A. Yes.

Q. When you operated the Sun, did you have connecting rates or could you make connecting rates from Bowling Green to other points and from other points to Bowling Green and give the rate?

A. No.

Q. Could you make connecting rates while the Sun was in operation from points North of the river, say from Cincinnati?

A. For a time we could.

Q. What prevented you from continuing to make those rates?

A. The line that we operated with refused to handle the freight for us except upon the local rates, and they turned over our business to the Evansville & Bowling Green Packet Co.

Q. Did you ever know anything about a boat called Mayflower that operated on the Tennessee or Cumberland?

A. I know there was such a boat.

Q. Who operated it?

A. Captain Howell. He was connected with the Tennessee River Packet Co.

Q. Where did the boat run to when you knew of it and about how long ago has it been?

A. From St. Louis up the Tennessee River.

Q. About how long ago has that been?

A. That must be 18 or 20 years ago.

Cross-examined by W. A. Colston, Att'y for the L. & N. Railroad Co.:

Q. When was it that the Evansville and Blue Wing operated in Green and Barren Rivers?

A. I don't know what dates.

Q. Approximately?

A. 1888 to 1890.

Q. They were competing boats?

A. Yes.

Q. Why did the Evansville go out of business at that time?

A. She was sold by the United States Marshal.

Q. Couldn't make expenses, couldn't net her debts?

A. Could not net her debts.

550 Q. Did you operate either one of those boats, Evansville or Blue Wing at that time?

A. I operated the Evansville before she was sold by the United States Marshal.

Q. Do you know how much money Mr. Ballantine made out of

the Gayoso, while he owned her and operated her on Green and Barren Rivers?

A. She was operated at a loss. I mean the total. There was a time she made money, but taking it altogether she was operated at a loss.

Q. You spoke of the season in the Green and Barren Rivers being continuous, it is true, is it not that you have what you call heavy and light business?

A. I never operated a boat on Green River that I didn't always try to make schedules and it is practically continuous.

Q. There are boats that run between here and Mammoth Cave that do not make schedules the entire year, due to towing and miscellaneous work that they would not do in regular season?

A. I think that is the case with one of Capt. Howell's boats.

Q. Do you know what the Green & Barren River Navigation Company paid for the lease of the facilities in Green River?

A. My understanding is that they did not pay anything. They agreed to keep the river in good condition.

Q. Do you know what the government gave them for their lease of their rights on the river?

A. $135,000.00.

Q. Captain, our river boats are measured for regular tonnage at the rate of 100 cubic feet to the registered ton, is that the basis?

A. I think so.

Q. A cubic capacity tonnage as you have referred to is it not?

A. Yes, but they are not all measured alike.

Q. They are measured by the same boat inspection rules aren't they?

A. Yes.

Q. The City of Clarksville which you said was operated by Capt. William Sever and bought by the southern trade, do you know how she prospered in the business on Green and Barren Rivers?

A. She was run at a loss and sold by the United States marshal.

Q. Apart from the Evansville and Blue Wing, Gayoso, Clarksville and Sun, were there any other boats that were operated in Green and Barren Rivers between Bowling Green and Evansville independent of those operated by the Green and Barren River Navigation Company, and Evansville & Bowling Green Packet Co.? In other words, I want to trace the history of the independent boats in the river?

A. I don't remember any other.

Q. Why was the Blue Wing withdrawn from the river?

A. She was sold by Capt. R. T. Williams.

Q. Do you know why she was retired from the trade in these rivers?

551 A. Capt. Williams went in partnership with the Green River Packet Company who owned the steamer Rescue.

Q. Did the Rescue ply in the Green and Barren River trade at one time?

A. Yes.

Q. Did either the Blue Wing or Rescue make any money out of the Green and Barren River trade or do you know?

A. I know that the Rescue did not and I do not think the Blue Wing made any money.

Q. Did Capt. Howell or any of the superior officers in the Evansville & Bowling Green Packet Company, when you received your instructions as to soliciting freight for Louisville, and other points, tell you they did not want you to solicit freight for Louisville or Cincinnati or for points other than Evansville on the Ohio River?

A. They did not state any reasons.

Q. Were you at the conference that you say was held with reference to the rate on tobacco from Franklin, Ky., to Louisville?

A. Yes.

Q. Where was that conference held?

A. In Louisville.

Q. What was the rate that was fixed?

A. Sixteen cents per hundred, Bowling Green wharf to Louisville.

Q. Of that rate what was the proportion to be received by the Evansville and Bowling Green Packet Company and what was the proportion to be received by the connecting carrier or carriers beyond?

A. Ten cents per hundred by the Evansville and Bowling Green Packet Company, six cents per hundred by the connecting line.

Q. You mentioned the fact that coal was formerly brought to Bowling Green. Do you know how the quality of that coal compares with the coal now brought into Bowling Green by the railroad?

A. It compares favorably with the coal now brought.

Q. Do you know how coal is graded?

A. No, sir.

Q. You do not know then the grade of the coal which was brought in by boats to Bowling Green?

A. Some was No. 9 and some No. 11.

Q. That is pretty low grade?

A. Some of the coal was fine coal. No. 9 is good.

Q. Do you know how the coal from Eastern Kentucky grades?

A. I do not.

Q. You know that Jellico coal and eastern Kentucky coal which comes to Bowling Green is a much higher grade of coal than that which use to come here by river, is it not?

A. I think the Jellico coal is some better.

Q. Capt., the Sun operated only eight months?

A. Yes.

Q. Do you know what her operating expenses were?

A. Yes.

Q. Please give those, operating expenses, stating separately as to how much was for maintenance, how much was for depreciation, how much was for operation including fuel and how much

552 represented other expenses?

A. I could not give it that way.

Q. It is a fact, is it not, Captain, that not allowing anything for interest or depreciation, the Sun took up for operating expenses all

of the income that there was, and no amount of income was applied to the notes or contract notes which were given in payment in price?

A. The running expenses took up the receipts and there was none applied to the notes.

Q. Can you give in round figures, the total running expenses of the Sun for the eight months she was in operation?

A. About $600.00 per week.

Q. In that $600.00 what items were included, were any maintenance included in that?

A. No.

Q. Any terminal expense for docks and locks included?

A. No.

Q. No depreciation included in that amount was there?

A. No.

Q. What was the registered tonnage of the Sun?

A. 94 tons.

Q. What was her actual or average capacity?

A. About 175 tons.

Q. You have said, I believe, that the registered tonnage of the J. B. Richardson was 350 tons, what was her actual capacity?

A. About 425 tons.

Q. When you spoke of the draft of the Green River boats being 3 feet, you meant loaded?

A. Three feet light.

Q. What is their draft loaded?

A. 5 feet.

Q. When you were operating the J. B. Richardson in Cumberland River, you said, I believe, there was in operation another boat between Paducah and Nashville, were there no other boats of any kind operating between Nashville and the Cumberland on no intermediate points at that time?

A. No packet boats.

Q. There were tow boats, however, were they not?

A. There were some tow boats handling timber.

Q. Any barges handling timber?

A. Yes.

Q. Was the Ryman line the only line operating on the Cumberland River at that time?

A. That was the only line operating packet boats at that time.

Q. The other lines then operated tow boats or barges?

A. Yes. They handled timber. No merchandise.

Q. Did they handle timber altogether in the barges?

A. Yes.

Q. Was there no grain handled in the barges?

A. None that I know of.

Q. During the four or six months which you indicated as the period when the Ryman line of packet boats could not be
553 operated, were they actually tied to the bank or were they sent to other rivers for services there?

A. Some of them were sent to other places.

Q. Do you know what boat lines are operated on the Cumberland now?

A. I do not.

Q. Do you know in what part of the Cumberland the Ryman line is now operated?

A. I do not.

Q. Capt., your experience on the rivers has been that of a navigator and not that of a financial man or a traffic man, has it not?

A. Both.

Q. What has been your experience in financing and with respect to managing the traffic of lines and boats other than that of the Sun?

A. On the Gayoso, Evansville and boats of the Green and Barren River Navigation Company.

Q. Were you one of the financial managers of the Green and Barren River Navigation Company?

A. During the latter part of their time on the river I was one of their managers.

Q. What position did you hold which involved the managing of the finances of the company?

A. I was one of the directors.

Q. Did the directors make the rates?

A. The superintendent made the rates usually and the directors passed upon the rates.

Q. You were not superintendent, were you, at any time?

A. No.

Q. Your active connection with the boat lines, outside of your experience as agent of the Evansville and Bowling Green Packet Company, has been that of master or pilot, has it not, captain?

A. Master, pilot and clerk.

Q. Who were the other directors of the Green and Barren River Navigation Company during the time you were a director in that company?

A. Capt. J. C. Vanmeter, Capt. C. G. Smallhouse, Capt. Ed Seeley, Capt. Jno. A. Robinson and I believe Judge Payne for a while. I believe that was all.

Q. Which of them were actively connected with the business of the company in any capacity or office other than that of director?

A. Capt. Robinson as superintendent and Capt. Seeley as secretary and treasurer.

Q. Who was the president of the company?

A. Capt. Smallhouse at that time.

Q. Did Capt. Vanmeter have any connection with the company other than director?

A. No.

554 Q. You were master of one of the boats at that time were you not, captain?

A. Yes.

Q. Were you at any time director when you were not master?

A. For a short time.

Q. How long?

A. I suppose six or eight months.

Q. Was that after you ceased to be master?

A. Yes, sir.

Q. And before your successor as director was elected?
A. Yes.
Q. Who succeeded you as director?
A. Mr. J. P. Barclay.
Q. After he became director, did you have any connection with the company, either as master or otherwise?
A. No.
Q. Why did you leave the Green — Barren River Navigation Company?
A. I went in business in Bowling Green.
Q. Was that when you began the manufacture of cob pipes, captain?
A. Long before that.
Q. In what business did you engage in Bowling Green?
A. Artificial ice business.
Q. How long did you continue in that business?
A. Three or four years.
Q. Why did you discontinue that business?
A. It ceased to be a paying business.
Q. When you speak of fifteen cents as a fair, average rate, what limits did you place as a high rate and the low rate or the rates that you would have to reach that average?
A. About ten cents on the low rate, 25 cents on the high rate.
Q. You state those as the rates between Bowling Green and Evansville, what would you say was a fair average for intermediate points?
A. Twenty cents.
Q. That is you would charge more for a shorter haul than for a longer haul on Green River?
A. Yes.
Q. You could not haul any coal at the rate of ten cents per hundred, could you?
A. We could not handle any coal on packets.
Q. You could not haul any stone could you?
A. We would not haul any stone on packets.
Q. Could you handle brick at ten cents per hundred?
A. Yes.
Q. What is the rate now prevailing on brick from Evansville to Bowling Green?
A. I don't know what they charge them.
Q. What classes of things could you handle at ten cents per hundred?
555 A. Hay, iron, nails and things of that kind.
Q. Would you classify iron the same as hay in making rates?
A. Yes.
Q. To what extent would you be governed by the value of the articles in making your rates?
A. That depends altogether on the article.
Q. Speaking now in reference to the element *in* value, that is an element to be considered in rating is it now?

A. Understand freight on the river is not classified as it is on railroads.

Q. To what extent would — give consideration to the value in making your rates on the river?

A. Of course, dry goods takes the highest class rate on rivers.

Q. With your scale of from 25 to 10 cents, what rates would you provide for hats and caps?

A. The highest rate, 25 cents.

Q. To what extent would you be governed by density or weight as compared with bulk in making your rates on the river?

A. The lighter quantity such as wooden ware and willow ware takes the highest rate.

Q. Are there any other elements you would consider in making freight rates on the river than those of value and density, if so, what are they?

A. There are none other.

Q. You say you don't handle any freight on the boat which you are now operating?

A. No, sir.

Q. About what year was it that the boats had a run through from Louisville to Bowling Green that you spoke of in your direct examination?

A. 1872.

Q. Why did they stop running through, Captain?

A. The rates were reduced by rail and it would not pay them to make the trip to Louisville by small boats such as Green River boats are.

Q. How does the river traffic, generally, on the Ohio and smaller rivers in this section compare generally with what it was in former days?

A. The rates are very much lower.

Q. You misunderstood me, Captain, I asked how the traffic compared not how the rates compared?

A. The traffic on the river is very much less.

Q. A boat like the Bowling Green or the boats operated now by the Evansville and Bowling Green Packet Company, would cost about $25,000.00 would it not, Captain?

A. A boat like the Bowling Green I think could be built for about $20,000.

Q. Do you know what the Bowling Green cost?

A. I do not.

556 Q. The Bowling Green has a capacity of about 250 tons of freight has it not?

A. Yes.

Q. In the matter of depreciation, captain, how long does a steam boat operate in Green and Barren Rivers before it needs what is known as general repairs?

A. Of course that depends on the care that is taken of the boat while operating it, but about three or four years.

Q. Then beginning with the fifth year, it is true is it not that

your heavy repairs are a pretty heavy thing and amount to about 20% of the value of the boat each year?

A. It should not amount to over 10%, with proper care while in operation.

Q. What did the general repairs to the Sun amount to during the eight months she was in operation?

A. We did not give her a general overhauling.

Q. In slack river navigation there is a delay of some 20 to 30 minutes in each lock, isn't there?

A. Fifteen minutes I think.

Q. There is greater wear and tear on nosing than there is in a river without locks and dams is it not?

A. On the lines but not much greater on the nosing.

Q. It is true, is it not, Captain, that the river rises more quickly in Green and Barren Rivers than it does in the Cumberland?

A. I think not.

Q. Where do the boats of Green and Barren River get their fuel?

A. Most of it from the coal banks along Green and Barren River-.

Q. What does it cost per ton?

A. Average four cents per bushel. About a dollar per ton.

Q. It is a fact. is it not, captain, that the practice on Green and Barren Rivers is to perform a greater service between warehouses in delivering and receiving freight than it is on the Cumberland, is it not?

A. I don't think it is.

Q. On Green and Barren Rivers is it not customary to make the delivery?

A. In some landings they put it in the warehouse, in others they do not.

Q. How old was the Sun when the merchants of Bowling Green purchased her?

A. Three years old.

Q. What is the difference in the size of the crew, if any, required for a boat on Green and Barren Rivers of 194 tons registered, such as I believe you said the Gayoso was, and of the boats now operated by the Bowling Green and Evansville Packet Company, and a boat such as the J. B. Richardson of 350 registered tons?

A. The licensed officers are the same. The deck crew on the Richardson is greater.

Q. Their requirements of the steam boat inspection services as to each are the same are they not?

A. Just the same.

557 Redirect *examined* by T. W. Thomas attorney for complainant:

Q. Captain, you spoke of the Green River Navigation Company owning the Rescue and Captain Williams going in with them for a while with the Blue Wing, that was located at Rochester was it not?

A. Rochester was the headquarters.

Q. Captain Williams was in this before he went in with Capt. Howell?

A. Yes, in the Green River Company.

Q. Where was the headquarters of the Green and Barren River Navigation Company?

A. Bowling Green, Ky.

Q. All these men named by you, Capt. Smallhouse, Seeley, Robinson, and Payne are all dead except Capt. C. J. Vanmeter, are they not?

A. Yes.

Q. He is now quite an old man, considerably over eighty is he not?

A. Yes.

Q. How long were you in the employ of the Green and Barren River Navigation Company altogether, you spoke of seventeen years. I don't know whether that was the total time or the time you were master?

A. That was the total time.

Q. How much of this time were you in charge of one or both of the boats, this 17 years?

A. About ten years.

Q. During said time was or not your advice taken and given and followed in respect to rates on the river?

A. Yes.

Q. Mr. Colston asked you when the Cumberland closed if some of the boats of the Ryman line were not sent to other places during the closed season, where did they go?

A. They were chartered to the different packet lines on the Ohio River.

Q. I believe you said some of them did not go any where, were layed up?

A. Yes, some were layed up.

Q. When the Evansville was sold by the Marshal was than when Mr. R. J. Meyler owned her?

A. Yes.

Q. Mr. Meyler was a citizen of Bowling Green, was he not and in the distillery business?

A. Yes.

Q. And he had not been in the steam boat business prior to that time, had he?

A. No.

Q. Mr. Colston asked you about the tow boats on the Cumberland. I believe you said tows and barges were carrying timber but no merchandise?

558 A. No merchandise.

Q. Where did the packets on the Cumberland get the coal for operation throughout this long trip?

A. The Evansville and Nashville boat- got their fuel at Nashville and at Evansville. Nashville and Paducah boat at Nashville and Paducah.

Q. About what did they have to pay for coal per bushel?

A. Average about eight cents.

Q. Was the fuel consumption greater or less on the J. B. Richard-

son than say the Gayoso, or the present Bowling Green on Green and Barren Rivers?

A. Some greater.

Q. Mr. Colston asked you something about the coal, *it is* not true that a large amount of the coal used in Bowling Green now is western Kentucky coal brought in by the railroads?

A. I think so.

Recross-examined by W. A. Colston, attorney for L. & N. Railroad:

Q. The coal that the Richardson and the other Cumberland River steamers made is Pittsburgh coal got on the Ohio River, is it not?

A. No.

Q. What coal is it?

A. It is lower Green River coal, usually Spottsville and Bluff City coal.

Q. And the boats pay eight cents per bushel at Evansville and by running twenty miles they can get it for four cents per bushel in Green River?

A. They don't pay eight cents per bushel at Evansville.

Q. When you spoke of advice given by you as to rates while you were with the Navigation Company, you do not mean, of course, that that was your particular province? It was, of course, the province of the superintendent?

A. Yes.

Q. You said the consumption of the fuel on the Richardson was some greater than it was on Green and Barren River boats. The consumption per ton either as compared with the registered tonnage or actual tonnage capacity is less on the Richardson, is it not, than on the Green and Barren River boats?

A. It is not.

Q. How many tons did the Richardson consume in a round trip of 200 miles?

A. About 1000 to 1200 bushels. That depends on the current.

Q. How much did the Gayoso consume for the same trip?

A. We can't compare the Gayoso with the other boats. That would not be a fair comparison because she was very light on fuel.

Q. About what would she consume on the same trip on which the Richardson would consume 1000 to 1200 bushels?

A. About 500 bushels.

Q. The Bowling Green?

A. I would say about 800 or 1000.

559 Q. What is the registered tonnage and average carrying capacity of the Bowling Green?

A. 194 average tonnage and she will carry about 250 tons.

Q. In slack water navigation you practically have no assistance of the current down stream?

A. That is true.

Q. Captain, how much western Kentucky coal is used in Bowling Green?

A. I do not know.

Q. Isn't it a fact, or do you know, Captain, whether the open seasons in the Cumberland corresponds with the season of large traffic to be removed, grain traffic for example?

A. It does to a certain extent but there is always good busines when they have the water. Any time a year.

Q. The tonnage to be offered by the City of Bowling Green and all the towns on Green and Barren Rivers to the boats operated in Green and Barren Rivers, is nothing like the tonnage that might be offered at the City of Nashville and Clarksville and smaller towns on the Cumberland, is it?

A. Not in the City of Nashville, but there is as much to be offered on the smaller towns on Green River as on the Cumberland.

Q. There is more tonnage to be offered to packet boats on Cumberland than there is on Green and Barren Rivers, is there not?

A. Not for the same distance. There is more tonnage on the Cumberland but the distance is greater.

Q. There is considerable more tonnage from Nashville to the mouth of the Cumberland than there is from Bowling Green to the mouth of the Green, available to packet boats, is there not?

A. I think not.

Q. I understood you in answer to my question just now to say that the Green and Barren Rivers from Bowling Green to the mouth of Green River produced more tonnage available to packet boats than the cities and towns and hamlets along the Cumberland from Nashville to the mouth of the Cumberland inclusive; now, that being so, of course, Green and Barren Rivers must produce more tonnage than any single town on the Cumberland. Now I ask you what towns combined on Green and Barren Rivers have the traffic and the possibilities for packet boats that the City of Nashville has?

A. There is no town that has the possibilities of Nashville, but taking it altogether, Bowling Green and all the towns and landings along Green River, the possibilities are greater than taking Nashville and all the towns and landings on the Cumberland to the mouth.

Q. How does the traffic of Bowling Green compare with the traffic of all the other landings on Green and Barren Rivers for packet boats?

A. There is not over one-tenth of the business comes to and from Bowling Green as there is from all the other towns and landings on Green River.

560 Q. Bowling Green then represents one-tenth or less of the total traffic on Green and Barren Rivers available to packet boats?

A. Yes.

Q. Please state how many landings there are on Green and Barren Rivers?

A. I could not state that because they are very numerous.

Q. Then how was it that the Sun was affected to any material extent by the cutting of the rates to and from Bowling Green?

A. The Evansville and Bowling Green Packet Company did not

only cut the rates to Bowling Green but from one end of the river to the other. In some instances knocking the rate clear out, offering to pay the shipper to allow them to carry the freight and give him his passage provided he wanted to go.

Q. But the L. & N. Railroad Company if it cut rates at all, cut rates to and from Bowling Green according to the testimony which has been given, the L. & N. Railroad Company did not operate to these river towns, did it?

A. Only in one way. They controlled the rates on Green River.

Q. I am trying to reconcile the statements that you have just made with statements that have previously been made in this case, with a view of showing that the cutting of rates on the L. & N. Railroad between Bowling Green and Louisville had a very serious effect on the fortune of the Sun. Now I ask you if the total traffic of Bowling Green is less than one-tenth of the total traffic of Green and Barren Rivers, available to packet boats, how could the cutting of rates from Louisville to Bowling Green and from Evansville to Bowling Green have any serious effect upon the fortune of the steamer Sun?

A. The steamer Sun of course would have to meet the rate or lose the business. If the operating expenses of the boat is merely paid by the Green River towns and then she loses the Bowling Green business, of course, she runs at a loss.

Q. Now, assuming that there was no railroad at either point, Nashville or Bowling Green, what is the comparative tonnage at the two points available to packet boats?

A. Nashville being the larger town, of course, the tonnage is greater.

Q. Would it be in approximate proportion to population?

A. Something like it, I suppose.

Q. The traffic of Clarksville is greater than the traffic of Bowling Green, is it not?

A. I do not know.

E. W. BEWLEY.

STATE OF KENTUCKY,
County of Warren, sct:

I, Nannie Stout, a Notary Public in and for the State of Kentucky, and county of Warren, hereby certify that the foregoing deposition of E. W. Bewley was taken before me by consent of parties and pursuant to the stipulation made a matter of record before Special Examiner Boyle, and was taken before me at the time
561 and place for the purpose mentioned in the caption; that the witness was duly sworn by me before giving said deposition to tell the truth, the whole truth and nothing but the truth; that the deposition was first written by me in shorthand in the presence of the witness and a true and correct and complete transcript thereof made by me on the typewriter, which transcript is contained in the foregoing 42 pages of typewritten matter; that said deposition was read by the witness and was signed by him in my presence.

Plaintiff was present by W. C. Sumpter, President of the Bowling Green Business Men's Protective Association, and by T. W. and R. C. P. Thomas, attorneys for complainant, and W. A. Colston was present representing the Louisville & Nashville Railroad Company and no other parties were present.

My commission expires 17th day of January, 1914.

Witness my hand and notorial seal this the 16th day of December, 1911.

[NOTARIAL SEAL.] NANNIE STOUT,
Notary Public, Warren County, Ky.

Louisville & Nashville Railroad Company.

LOUISVILLE, KY., January 31, 1907.

Copy.

Fox.

Bowling Green, Ky., Rates.

Capt. Lee Howell, President E. & B. G. Pkt. Co., Evansville, Ind.

DEAR SIR: I had a conference at Louisville yesterday with a committee representing the Bowling Green Business Men's Protective Association, concerning the existing rates from the Ohio River and St. Louis to Bowling Green. As a result of that conference we agreed to make a few changes in the existing rates, which I mention below:

Syrup and Molasses, C. L.

Our present rail rates are made on regular basis, as compared with commodity rate of 15 cents per hundred pounds by boat, Evansville to Bowling Green. The syrup which is actually shipped all moves in cans from St. Louis, and it was stated that the boats have been charging 12½ cents from Evansville to Bowling Green, that is to say, the tariff rate on canned goods. I think it is more than likely this statement is altogether correct. I do not mention it with any purpose of charging the boat line with bad faith. The mistake is not unnatural at all, and is readily accounted for. Considering the conditions existing at Bowling Green just now I did not believe it wise to suggest that your boats had better handle this business hereafter at 15 cents, but let it stay at 12½ cents, but it was
562 arranged that we would reduce our rail rate basing it upon a rate of 12½ cents Evansville to Bowling Green.

Woven Wire Fencing.

We are carrying at this time rate of 25 cents per hundred pounds Louisville to Bowling Green on woven wire fencing, carloads; also a rate of 20 cents per hundred pounds Louisville to Bowling Green

on barbed wire, carloads. I do not believe this difference is justifiable, and, as a matter of fact, the woven wire fencing is better freight and no more valuable than barbed wire. Therefore advised the committee that we would make the rate from Louisville to Bowling Green on woven wire fencing, C. L., 20 cents, or the same as on barbed wire, C. L.

Vinegar, C. L.

Your present rate by boat Evansville to Bowling Green, I believe, is 15 cents, though you carry a commodity rate of 12½ cents on groceries N. O. S., carloads. I understand there is actually no movement from Evansville to Bowling Green, by boat, nor is there likely to be any. I thought, therefore, we would base our rate as upon a commodity rate of 12½ cents by boat from Evansville, making 17½ cents by rail from Louisville. I trust this will be satisfactory to you.

Yours truly,
(Signed) D. M. GOODWYN,
General Freight Agent.

Evansville & Bowling Green Packet Co.

EVANSVILLE, IND., Feb., 11, 1907.

Bowling Green, Kentucky, Rates.

63060.

Mr. D. M. Goodwyn, G. F. A., L. & N. R. R. Co., Louisville, Ky.

DEAR SIR: I have your favor of January 31st—Fox, and have noted the rates you propose to establish to Bowling Green, Ky.

I have no objection to the rates you propose to establish to Bowling Green.

Yours truly,
(Signed) LEE HOWELL, *President.*

563 Louisville & Nashville Railroad Company.

LOUISVILLE, KY., November 29, 1911.

(Copy.)

362,907—Fox.

I. C. C. Docket 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION
vs.
LOUISVILLE & NASHVILLE R. R. et al.

Mr. G. P. Boyle, Special Examiner, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: During the hearing of the above case at Bowling Green, Ky., and while I was on the witness stand yesterday, the 28th instant, it will be remembered that Mr. Thomas, attorney for the complainants, asked me whether I had written any letter to Captain Lee Howell, President of the Evansville & Bowling Green Packet Co., concerning a conference which took place between myself and certain representative citizens of Bowling Green at my office in Louisville during the latter part of January, 1907. I replied that I had not written such a letter. Mr. Thomas then asked that I be required to file with the Commission, or at least to exhibit to yourself, any such letter that might have been written and located in our correspondence files after my return to headquarters. It is unnecessary to make reference to the discussion following Mr. Thomas' request, that descussion being between myself and our Commerce Attorney, Mr. Colston.

Prior to the hearing at Bowling Green I had gone over the papers in my files concerning this matter and had read the correspondence pertaining to the various conferences with the Bowling Green people. All of the matters were properly covered by General Freight Office file 362907, of which there were three volumes, beginning in December, 1905 and coming on down to the present time. The examination made by me of the file just prior to the Bowling Green hearing failed to show any correspondence whatever between myself and Captain Lee Howell concerning the conference with the Bowling Green gentlemen at my office in Louisville in January, 1907, and it -as upon the strength of that examination I gave testimony that no such letter to Captain Howell had been written by me. It will be recalled, however, I stated that I was speaking from memory and to the best of my knowledge and belief.

Upon returning to Louisville I, this morning, had a thorough check made of my office correspondence files to get out any and every set of papers relating in any way to the matter of rates to Bowling Green. This check located 13 other files containing more or less correspondence concerning rates to the city of Bowling

Green, and in one of them—number 332448, vol. 2, the sub-
564 ject of which is "dried beans, Nashville, Tenn. to Bowling Green, Ky."—I found carbon copy of a letter written by me to Captain Lee Howell, President of the Evansville & Bowling Green Packet Co., under date of January 31st, 1907. I also found in the same file the reply from Captain Howell, President of the Packet Company, dated February 11th, 1907, both of which documents have been exhibited to you this day.

The file above mentioned,—332448—in addition to the question of rate on dried beans from Nashville to Bowling Green, likewise covers the following additional subjects:

Beer in casks, Louisville to Bowling Green;
Fertilizer, Cincinnati, O., to Bowling Green;
Notions, Eastern Cities to Bowling Green;
Street cars, Baltimore to Bowling Green;
Surreys, Henderson to Bowling Green;
Apples, Ohio River to Bowling Green;

The letter written by me to President Howell, of the E. & B. G. Packet Co., on January 31st, 1907 and the reply thereto should have been placed in our file 362907, which covers the general question of the complaint at Bowling Green, Ky. of the Bowling Green Commercial Club. I make this explanation in justice to myself, as showing the occasion of the particular testimony given by me referred to in the first part of this letter, and why I was misled by the incorrect filing of the documents exhibited to you today.

Yours truly,

(Signed) D. M. GOODWYN,
General Freight Agent.

Copy to:

Mr. Thomas W. Thomas, care T. W. & R. C. P. Thomas, Attorneys, Bowling Green, Ky.

Mr. W. A. Colston, Commerce Attorney, L. & N. R. R. Co., Louisville, Ky.

Interstate Commerce Commission, Washington.

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the papers and documents hereto attached are true copies of all the evidence introduced by the parties at the hearings in the proceedings before the Interstate Commerce Commission in that portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company which seeks authority to continue lower rates on traffic through Louisville, Kentucky, to and from Clarksville and Nashville, Tennessee, than are charged on like traffic to and from intermediate stations between Louisville, Kentucky, and Clarksville and Nashville, Tennessee; also that portion of the same application which seeks authority to continue lower rates on traffic through Nashville and Clarksville, Tennessee, to and from Louisville, Kentucky, than are concurrently effective on like traffic to and from intermediate stations between

565 Clarksville and Nashville, Tennessee, and Louisville, Kentucky, the originals of which are now on file and of record in the office of this Commission. The documents and testimony referred to in this record on pages 21, 22 and 66 were not actually filed herein and are not included in this record.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Commission this 27th day of January, 1913.

[Seal Interstate Commerce Commission, 1887.]

JOHN H. MARBLE,
Secretary of the Interstate Commerce Commission.

Before the Interstate Commerce Commission.

Application No. 1952.

Application of the LOUISVILLE & NASHVILLE RAILROAD COMPANY et al. for Relief from the Provisions of the Fourth Section.

Before E. L. Gaddess, Special Examiner.

BOWLING GREEN, KY., April 29, 1912.

Appearances:

F. W. Thomas, Esq., (Bowling Green, Ky.), and
R. C. P. Thomas, Esq., (Bowling Green, Ky.), for the Bowling Green Business Men's Protective Association.
W. A. Colston, Esq., (Louisville, Ky.), Attorney for Louisville & Nashville Railroad Company.
J. N. Steadwell, Esq., (Nashville, Tenn.), Assistant General Freight Agent, Nashville, Chattanooga & St. Louis Railway.
E. K. Bryan, Jr., Esq., (Memphis, Tenn.), Assistant General Freight Agent, Illinois Central Railroad Company.
Frank W. Gwathmey, Esq., (Colorado Bldg., Washington, D. C.), appearing for Illinois Central Railroad Company, Norfolk & Western Railway Company, Nashville, Chattanooga & St. Louis Railway, Old Dominion Steamship Company, Western & Atlantic Railroad and Southern Railway Company.

Index of Witnesses.

	Dr.	Cr.	Redr.	Recr.
D. M. Goodwyn	26	..	..	..
E. K. Bryan, Jr.	63	..	..	..

Index of Exhibits.

Defendant's Ex. No. 1	26	..	..	..

Examiner Gaddess: Gentlemen, The Commission has assigned for hearing to-day that portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railway Company for itself, and on behalf of its connections, which seeks authority to continue to charge lower rates on freight traffic through Louisville, Kentucky, to and from Clarksville, Tennessee, and Nashville, Tennessee, than are charged on like traffic to and from intermediate stations. Also that portion of the same application which seeks authority to continue lower rates on freight traffic through Nashville and Clarksville, Tennessee, and to and from Louisville, Kentucky; also that portion of the same application which seeks authority to continue lower rates to and from all points that are reached via the lines to and from Clarksville and Nashville, Tennessee, than are charged on like traffic to and from intermediate stations between Louisville, Kentucky, and Clarksville and Nashville, Tennessee. Also that part of said application which seeks authority for lower rates to and from all points on or reached by the lines and its connections to and from Louisville, and so forth.

Now, gentlemen, notice has been served upon all of the carriers parties to this application, and also upon the Bowling Green Business Men's Protective Association, and I will now ask for the appearances in this case.

Who appears for the Louisville & Nashville Railroad Company?

Mr. Colston: W. A. Colston.

Examiner Gaddess: Nashville, Chattanooga & St. Louis Railway?

Mr. Steadwell: John N. Steadwell, Assistant General Freight Agent, N. C. & St. L. Railway Company, and Frank W. Gwathmey.

Examiner Gaddess: Western & Atlantic Railroad?

Mr. Steadwell: Frank W. Gwathmey and J. N. Steadwell.

Examiner Gaddess: Evansville & Terre Haute Railroad Company?

(No appearance.)

Examiner Gaddess: Chicago & Eastern Illinois Railroad Company?

(No appearance.)

Examiner Gaddess: Norfolk & Western Railway Company?

Mr. Gwathmey: Frank W. Gwathmey.

Examiner Gaddess: The Lake Shore & Michigan Central Railway Company?

(No appearance.)

Examiner Gaddess: Michigan Central Railroad Company?

(No appearance.)

Examiner Gaddess: The Cincinnati, Hamilton & Dayton Railway Company?

(No appearance.)

Examiner Gaddess: The Pennsylvania Company?

(No appearance.)

Examiner Gaddess: The Baltimore & Ohio Railroad Company?

(No appearance.)

567 Examiner Gaddess: The Baltimore & Ohio Southwestern Railroad Company?

(No appearance.)

Examiner Gaddess: Chicago, Indianapolis & Louisville Railway Company?

(No appearance.)

Examiner Gaddess: Rapid Railroad Company?

(No appearance.)

Examiner Gaddess: The Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

(No appearance.)

Examiner Gaddess: Maine Central Railroad Company?

(No appearance.)

Examiner Gaddess: The New York Central & Hudson River Railroad Company?

Mr. Colston: In so far as this hearing may have any effect upon the hearing in the Bowling Green Business Men's Protective Association case, I appear for the New York Central & Hudson River Railroad Company.

Examiner Gaddess: The Delaware, Lackawanna & Western Railroad Company?

(No appearance.)

Examiner Gaddess: The West Shore Railroad Company?

(No appearance.)

Examiner Gaddess: The Chesapeake & Ohio Railway Company?

(No appearance.)

Examiner Gaddess: Illinois Central Railroad Company?

Mr. Gwathney: I appear for that company, and Mr. E. K. Bryan, Jr., Assistant General Freight Agent.

Examiner Gaddess: Southern Railway Company?

Mr. Gwathney: Frank W. Gwathney.

Examiner Gaddess: The New York, New Haven & Hartford Railroad Company?

(No appearance.)

Examiner Gaddess: Boston & Albany Railroad Company?

(No appearance.)

Examiner Gaddess: Boston & Maine Railroad Company?

(No appearance.)

Examiner Gaddess: The New York, Chicago & St. Louis Railroad Company?

(No appearance.)

Examiner Gaddess. Pere Marquette Railroad Company?

(No appearance.)

Examiner Gaddess: Philadelphia & Reading Railway Company?

(No appearance.)

Examiner Gaddess: The Pittsburg, Cincinnati, Chicago & St. Louis Railway Company?

(No appearance.)

Examiner Gaddess: Lehigh Valley Railroad Company?

(No appearance.)

Examiner Gaddess: The Wabash Railroad Company?

(No appearance.)

568 Examiner Gaddess: Old Dominion Steamship Company?
(No appearance).
Examiner Gaddess: Merchants & Miners Transportation Company?
(No appearance).
Examiner Gaddess: The Main Steamship Company?
(No appearance).
Examiner Gaddess: Who appears for the Bowling Green Business Men's Protective Association?
Mr. Thomas: T. W. & R. C. P. Thomas, appear for them, and I want to enter their appearance in a qualified way. I will state that now or later.
Examiner Gaddess: Well, you may state it later, Mr. Thomas. The law places the burden upon the carriers to defend the present adjustment of rates, and after they have made what justification they desire to make, why then we will give you an opportunity to be heard to introduce any evidence or make any statements which you may desire.
Mr. Thomas: Should we cross examine any of their witnesses, we don't waive the ojection which we offer——
Examiner Gaddess: If you desire, Mr. Thomas, at this time, to offer any objection as to proof to be introduced, you may state it now.
Mr. Thomas: Mr. Examiner, the Bowling Green Business Men's Protective Association, of Bowling Green, Kentucky, file with the Interstate Commerce Commission, a complaint against the Louisville & Nashville Railroad Company, et al., which bears number 4310 on the Interstate Commerce Commission docket. In that complaint, among other complaints made for violations of other sections of the Interstate Commerce Act, or the Act to Regulate Commerce, in paragraph 17, the Bowling Green Business Men's Protective Association complains, speaking of the rate set forth in said complaint, that they furthermore constitute in a majority of instances greater charges for the shorter distances to and from Bowling Green, Kentucky, than for the longer distances to or from the cities of Clarksville and Nashville, Tennessee, and Louisville, Kentucky, such shorter distances being included within the longer distances, and being over the same line, and in the same direction, said greater charges to and from Bowling Green being in violation of Section 4 of the Act to Regulate Commerce as amended June 18th, 1910.
Upon the entire complaint, as well as upon that paragraph, the Louisville & Nashville Railroad Company and the other defendants joined issue. Proof was heard covering the entire case, and on that issue also proof was offered by the complainant, and proof on behalf of the defendants. The case was briefed, has been argued, and submitted. Now we insist that as to the rates complained of in that complaint, issue having been joined and proof heard, the defendants in that complaint *was* concluded from taking any further evidence upon that proposition, and we insist that they cannot now open up in a collateral way, an issue which has been met, upon which proof has been heard, and upon which argument has been had, and which has been submitted for decision.

569 In so far as the City of Bowling Green is concerned, we wish to further object to any proof being heard at this time upon the application of the defendants to be relieved from the Fourth Section of the Act to Regulate Commerce as amended, in so far as said proof shall effect, in any way, the issues made, or in the proof heard in the Bowling Green case which has been heard and submitted.

Examiner Gaddess: Mr. Thomas, I do not understand that this hearing is for the purpose of opening up the Bowling Green case. Now, as I understand it, the application of the carriers was not set down for hearing at the time that the Bowling Green case was heard, and therefore I do not believe that the Commission can make an order affecting any rates on the Fourth Section until they have passed upon the application protecting those rates, and that is the object of this hearing, to give the carriers an opportunity to make such a defense as they may desire, of the present adjustment of rates, before the Commission passes upon your case, and in setting this case down it not only affects Bowling Green, but all of the intermediate points by way of Louisville, Clarksville, and Nashville, and it is in defense of those intermediate rates, as well as the Bowling Green rates, that the carriers are here to-day.

Mr. Thomas: If I may be permitted to amplify my position a little further. According to our view, it is immaterial whether the application is pending, or was brought since the Bowling Green case was filed and heard, it being a collateral attack, in so far as the issues involved in the Bowling Green case were met, proof introduced and heard upon that. If the application was pending, which I understand it was prior to the Bowling Green case, in so far as the rates set forth and complained of in the Bowling Green complaint, and proof heard upon that, the application became merged in that case, and they cannot be now heard to justify violation of the Fourth Section by other proof than that offered in the Bowling Green case upon these rates complained of.

It is not for the purpose of delaying the hearing, but I want the record straight.

Examiner Gaddess: Do you desire to proceed, Mr. Colston?

Mr. Colston: Yes, I would like to make a short preliminary statement.

Mr. Gwathmey: May I interrupt you?

Mr. Colston: Certainly.

Mr. Gwathmey: Mr. Examiner, may I ask if I am correct in the understanding that this hearing is with reference particularly to the stations on the line of the Louisville & Nashville Railroad Company between Nashville & Louisville, and that the Illinois Central Railroad, and the N. C. C. & St. L. Railway and other lines which are named, are named by reason of the fact that they are connections, and of course are interested in the rates?

Examiner Gaddess: It is my understanding, Mr. Gwathmey, that the application to be heard to-day only affects the rates on the Louisville & Nashville Railroad between Louisville, Clarksville and Nashville. Now, if your road is a party to any of the haul beyond

570 Louisville, or to any of the haul beyond Clarksville or Nashville, then to that extent your company is interested in this hearing.

Mr. Gwathmey: To illustrate, the Illinois Central Railroad Company has a line from Louisville running through Clarksville.

Examiner Gaddess: We are not investigating that situation to-day.

Mr. Gwathmey: The representatives of the Nashville, Chattanooga & St. Louis R. R. and the Illinois Central are here to-day, and I am also here representing the roads for which I have entered my appearance, and I wish to state that we appear because, in the first place, the notice was not quite clear to us, and we wanted to make sure that we would be protected in any future hearing, and also because we of course understand that we are interested as connecting lines.

Examiner Gaddess: As I understand it, the violations are only on the Louisville & Nashville Railroad between the point- before named, and we are not to-day investigating the violations on the Illinois Central over this route you have just named. We will, however, at an early date, take up, I think, this entire situation down here, and have a full hearing as to all violations by all routes.

Mr. Gwathmey: We had supposed that that would be done.

Examiner Gaddess: That will be done at a very early date. You may proceed, Mr. Colston.

Mr. Colston: Mr. Examiner, I think it well in the first place, to correct a very evident misapprehension on the part of counsel for the Bowling Green Business Men's Protective Association, and to the defendants in the Bowling Green case. This hearing to-day was ordered by the Commission. Of course I don't agree with the claim made by counsel for the Bowling Green Business Men's Association as to any merger of cases, but I think it would be out of place to argue that case here. This is a case which arises out of an application made by the Louisville & Nashville Railroad Company for relief from the Fourth Section of the Act to Regulate Commerce, with respect to its freight traffic which affects not only this comparatively small territory here, but relates to the entire territory in the southeast traversed by the lines of the Louisville & Nashville Railroad Company. The case of the Bowling Green Business Men's Association of Bowling Green, Kentucky, against the Louisville & Nashville Railroad Company and others, I. C. C. Docket No. 4317*0*, was an entirely separate case. I assume that the Commission having had submitted to it the entire case of the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, against the Louisville & Nashville Railroad Company and others, and having noticed that that case involved a small part of the case then pending before it relating to the Louisville & Nashville application for relief from the Fourth Section, determined that they would not be able to decide the Bowling Green case, by which I mean the case of the Bowling Green Business Men's Protective Association against the Louisville & Nashville Railroad Company, et al. until they had in hand all of the necessary information relative to the Fourth Section application in so far as it might affect the same matters, and consequently
571 the Commission, and not the defendants in the Bowling Green case, have ordered this further hearing.

Examiner Gaddess: I can state for Mr. Thomas's information that that is a fact, that the railroads had nothing to do with this, and this hearing was ordered by the Commission, as I said before, based upon

the Fourth Section feature of the application before determining the Bowling Green case.

Mr. Thomas: I can see very readily how that is, Mr. Examiner. I am objecting to opening up that part of the issues which have been met and heard in the Bowling Green case.

Examiner Gaddess: Well, as I understand it, Mr. Thomas, the Fourth Section feature was gone into in the Bowling Green case very fully. I had nothing to do with that hearing, but from what I have had to do, or been able to gather from the record in the little opportunity I have had to examine it, I have come to the conclusion that the reasonableness of the rate was not only gone into, but the competitive conditions existing both at Bowling Green and Louisville and Clarksville and Nashville were also gone into, and I don't see that there is very much further that can be said as to Bowling Green; but there are other points that are intermediate, and it is as much for those other intermediate points that this hearing is held as Bowling Green, but the Commission wants before it all of the evidence and all of the facts that will assist it in reaching a conclusion not only as to your case, but as to the Fourth Section application which protects the railroads in their present adjustment of continuing lower rates to the more distant points, than to the intermediate points.

Mr. Colston: Mr. Examiner, the Commission is an investigating body, and is not bound by the fixed rules of judicial procedure. We know that even if the Bowling Green case had been closed and submitted, and the Commission desires further information upon the question, the Commission would be fully within its rights in opening up the case and asking for a further hearing.

Examiner Gaddess: That is correct.

Mr. Thomas: We concede that, of course.

Mr. Colston: Consequently any objection to taking any testimony in this case is irrelevant, and entirely groundless.

Examiner Gaddess: In reference to the railroads introducing any further evidence, we make the same proposition to you, to introduce any further evidence you want to.

Mr. Thomas: I understand that. I am not objecting to the introducing of evidence on this general situation. I can see readily how the Commission would desire to have the general situation entirely before it. I only object, and I want it shown for that purpose, that there has been an issue made as to the rates set forth in the Bowling Green Complaint No. 43*L*10, and all of the proof has been introduced in the case, and it was argued, and closed, and submitted, and whatever proof shall be offered here shall not affect that case.

Examiner Gaddess: Mr. Thomas, the Commission is not precluded by the strict rules of procedure in acting upon these cases, and it has been their custom and their practice to get every possible bit
572 of information, and if the Commission deems it necessary to reopen a case after they have decided it, they will do so.

Mr. Colston: I will give you an illustration. The Commission, having handed down its opinion in the Memphis case, is now proceeding to take further evidence.

Mr. Thomas: That is the universal rule; I understand that.

Examiner Gaddess: You may proceed, if you have a witness.
Mr. Colston: I would like to finish my statement.
Examiner Gaddess: Proceed.
Mr. Colston: The matters involved in that portion of the Fourth Section Application of the Louisville & Nashville Railroad Company, which has been set down for hearing today, has been gone into at length in the previous case—in the previous hearing held in this court room in the case of the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, against the Louisville & Nashville Railroad Company and others, I. C. C. Docket No. 4310. The comparisons made in that case were of course limited to comparisons between Bowling Green on the ane hand, and Nashville, Clarksville and Louisville on the other hand, in so far as to-day issues are involved. There were also comparisons against Evansville in the previous case, which are not involved in to-days's hearing, but as the hearing to-day involves not only Bowling Green but also all of the other intermediate stations between Nashville and Louisville, or between Clarksville and Louisville, we shall amplify our previous testimony only to such extent as is necessary to bring in the other stations, and shall, in order to save the Fourth Section Board the necessity for going through the mass of detail, present a short resumé through one of our witnesses setting forth the elements of competition which effect the situation.

I will say also, Mr. Examiner, that we shall be glad to furnish any further information that the Commission or the Fourth Section Board may desire to call upon us to furnish, in order to throw all of the light that is possible upon this question of competitive influences. Of course the entire case now before us hinges upon competitive influences existing at one point, which do not exist at another, and that as a matter to which we shall address ourselves to-day, and we shall not make any references to the specific rates complained of in the Bowling Green case. In line with what I have stated, and with a view of shortening the hearing now, I wish to refer to and make part of the record in this case, the testimony given by Mr. D. M. Goodwin and Charles E. Fulton, in the case of the Bowling Green Business Men's Association of Bowling Green, Kentucky, against the Louisville & Nashville Railroad Company, et al., I. C. C. No. 4310. I wish also to refer to *make and* a part of the record in this proceeding or hearing, the record in all of the other hearings relating to this same application of the Louisville & Nashville Railroad Company, No. 1952. It will be a mere encumbrance of the record to put them into this transcript at this time.

I would also like to refer to and make a part of the record in this case, all of the testimony and argument introduced on
573 behalf of the Louisville & Nashville Railroad Company, and on behalf of the members of the Southern Railway & Steamship Association, and on behalf of the other Southeastern lines in the hearings in 1887 before the Commission in reference to the application for relief from the Fourth Section of the Act to Regulate Commerce relating to the long and short — clause.

I would also introduce as Louisville & Nashville Railroad Com-

pany's Exhibit No. 1, the brief filed on behalf of the defendants in the case of the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, versus the Louisville & Nashville Railroad Company, and others, I. C. C. Docket No. 43110, in which proof is set out with respect to Bowling Green, of certain competitive conditions, which justified the violation of the literal provisions of the long and short haul clause. In that proof, Bowling Green is compared with Nashville and with Clarksville, and Bowling Green is compared with Louisville, also with Evansville. The comparison with Evansville does not relate to this proposition here. A description is given of the way in which rates are made, and reference is made to previous consideration of the same problems. It is set forth that the rates to and from Bowling Green are reasonable in and of themselves, and that the rates to and from Clarksville and Nashville are not lower than are necessary, and that the rates to and from Bowling Green meet the competition at that point as far as necessary. It is shown, generally, that there is water competition at Louisville, Kentucky, Evansville, Indiana, and Nashville, and Clarksville, Tennessee, which does not exist at Bowling Green, Kentucky; that there is at Louisville, Kentucky, Evansville, Indiana, and Nashville and Clarksville, Tennessee, competition of carrier with carrier, intensified by market competition, and there is no such competition at Bowling Green, Kentucky. That the rates complained of are reasonable in and of themselves, and the Louisville, Evansville, Nashville and Clarksville rates are no lower than it is necessary that they should be in order to meet the competition existing at those points, and that the Bowling Green rates meet the competition existing at that point as far as it is necessary so to do. What we have already asserted as to Bowling Green, we now assert as to all of the intermediate stations; that is, we say that the traffic conditions or the conditions of transportation at Louisville, Kentucky, and Nashville and Clarksville, Tennessee, differ from those at the intermediate stations. First, with respect to the circumstances and conditions of transportation which arise from water competition, consequently, with respect to the circumstances and conditions of transportation which arise from competition of carrier with carrier, intensified by market competition. That the rates to and from the intermediate points are reasonable in and of themselves; that the lower rates to competitive points are not lower than it is necessary that they should be in order to meet the competition which exists at those points. And wherever any competition does exist at any intermediate points, that that competition has affected the rates in so far as it is proper it should affect
574 those rates, and that the rates have been reduced as far as it is necessary to do so.

We will show, Mr. Examiner, that Bowling Green is one of two points intermediate to Louisville and Nashville, or intermediate to Louisville and Clarksville, at which there is some measure of competition, the other point being Elizabethtown, Kentucky, at which point we make a connection with the Illinois Central road, and that the competition at Bowling Green, slight as we think we have

demonstrated it to be, is nevertheless stronger than the competition which exists at any other intermediate point, and that we have met that competition at Bowling Green as far as it is necessary to do so, and that we have met the competition at Elizabethtown, as far as it is necessary to do so, and that at no other points intermediate to Louisville, Nashville and Clarksville is there any competition except cross country competition, and that we have met that competition as far as it is necessary to do so; so that the whole case, or this part of the case relating to our application resolves itself into this, that there exists at Louisville, Nashville and Clarksville, compelling causes of competition or compelling elements of competition which do not exist at intermediate points. I will call Mr. Goodwyn.

Mr. Thomas: I do not desire to repeat my objection, but I would like to be permitted to say that nothing could illustrate more forcibly the justness of my objection than the statement by counsel just made reading from the brief in the Bowling Green case.

Examiner Gaddess: Well, Mr. Thomas, I see no objection to counsel for the Railroad Company making a part of this record——

Mr. Thomas: I don't object to that.

Examiner Gaddess: He says that the issues as to Bowling Green apply also to the intermediate points, and for that reason he wants to make the Bowling Green record part of this record, and as to that I see no objection.

(The papers so offered and identified were received in evidence, and thereupon marked "Defendants' Exhibit No. 1, received in evidence April 29th, 1912", and the same is attached hereto.)

D. M. Goodwyn was called as a witness on behalf of the defendants, — being duly sworn, testified as follows:

Direct examination:

Mr. Colston: Mr. Goodwyn, give your name, residence and occupation.

Mr. Goodwyn: Name, D. M. Goodwyn; residence, Louisville, Kentucky; occupation, General Freight Agent of the Louisville & Nashville Railroad system.

Mr. Colston: Please state how long you have been connected with the Louisville & Nashville Railroad, what positions you have held, and what traffic experience you have had with other companies.

Mr. Goodwyn: I have been with the Louisville & Nashville Railroad since the first of November, 1894, taking service with
575 that company originally as general clerk in the general freight office of the road, having charge of the clerical force, the supervision in that capacity of its tariffs and issuance, and the making of such rates myself as came within the duty of that particular service. Furthermore, while I was chief clerk of the road I represented the General Freight Agent at conferences with other roads respecting rate matters and subjects which came within the scope of the General Freight Department.

About 1898, I think it was, I was appointed Assistant General Freight Agent of the Louisville & Nashville Railroad in direct and immediate charge of its rate matters, subject, of course, to the direction of my superior officer, the General Freight Agent.

On November 1st, 1901, as well as I remember, I was made General Freight Agent of the road, succeeding the previous General Freight Agent who was made Traffic Manager, continuing the duties which had theretofore been assigned to him, and with the jurisdiction and authority that usually attaches to the office.

Prior to my connection with the Louisville & Nashville Railroad Company, I had been in railroad service since about 1877, first in Texas, in various capacities in the freight department, rate clerk principally, then in 1888 I moved to Memphis, Tennessee, as rate clerk there of the old Louisville, New Orleans & Texas R. R. Company, now known as the Yazoo & Mississippi Valley Railroad Company, and part of the Illinois Central system. I continued with the L., N. O. & T. until its purchase by the Illinois Central. After that I served as chief clerk in the office of the Assistant General Freight Agent of the Illinois Central Railroad at Memphis, until I moved to Louisville in 1894.

Mr. Colston: Mr. Goodwyn, in all of this traffic experience, have you had to do more with the solicitation work of the Traffic Department, or have you had to do more with the rate work of the Traffic Department?

Mr. Goodwyn: My principal duties since I have been in the railroad business have been in the Rate Department of the road; I have had nothing whatever to do with the solicitation directly, except since my appointment as General Freight Agent of the Louisville & Nashville Railroad; prior to that time I had had nothing to do with solicitation.

Mr. Colston: In your experience have you had occasion to measure the effect of water and of other competition, and to decide what methods are necessary and proper to compete with, and meet competition in the transportation of freight?

Mr. Goodwyn: Yes, sir, I have had experience of that sort, and especially with my going to Memphis in 1888, during my service there until 1894, likewise since 1894 with the Louisville & Nashville. While I was in Memphis, and particularly when I first went there with the Louisville, New Orleans & Texas road, water competition was an every day situation with us. The L., N. O. & T. road may be said to parallel the Mississippi River from Memphis to New Orleans for its entire length, and the Mississippi
576 River not only exerted an influence over the rate adjustment of the road, but a daily and hourly influence to such an extent that those rates were very largely compelled and controlled by that water competition, which in those days was very much more active and aggressive on the river than perhaps at the present time.

Mr. Colston: Mr. Goodwyn, please describe generally the geographical location of Louisville, Kentucky, Nashville, and Clarksville, Tennessee.

Mr. Goodwyn: Louisville is in the north—the central north, you

might say, of the state of Kentucky, and is located on the Ohio River. Nashville is in middle Tennessee on the Cumberland River, Clarksville is in West Tennessee, likewise on the Cumberland River. The main line of the Louisville & Nashville Railroad Company extends from Louisville to Nashville for a distance of 187 miles. We have a branch known as the Memphis Division, which crosses the Cumberland River at Clarksville. That branch starts at Memphis Junction, 118 miles south of Louisville, crosses the Cumberland River at Clarksville, 60 miles distant from Memphis Junction, and extends to Memphis, Tennessee, 199 miles from Clarksville.

Mr. Colston: With reference to traffic through Louisville, Kentucky, to and from Clarksville, Tennessee, and to traffic through Nashville and Clarksville, Tennessee, to and from Louisville, Kentucky, please compare the natural and acquired advantages of Louisville, Kentucky, in the transportation of freight with the natural and acquired conditions of its intermediate points between Louisville on the one hand, and Nashville and Clarksville on the other.

Mr. Goodwyn: As already stated, Louisville is situated on the Ohio River, and prior to the construction of railroads in the south, and since that time has been one of the main arteries of commerce. The Ohio River in the past has exercised a most powerful influence over freight rates and its potential influence to-day is almost as great as its actual influence in the past. The Cumberland River having its source in Eastern Kentucky, from the streams flowing down from the Cumberland Mountains, runs through the central part of the State of Tennessee in a general way, passing the cities of Nashville and Clarksville, and then across and finally empties into the Ohio River at a point near Paducah, Kentucky. Prior to the construction of railroads in the south, Louisville had the natural advantage of being able to reach both Clarksville and Nashville via all water service, and distributing its freight to and via those points. Louisville likewise had a natural geographical advantage of being located immediately adjacent to the most populous part of the country. From the natural advantages of the place, it attracted the attention of the railroad builders nearby, as *as* one of the principal gateways of the south, a distinction which it still enjoys. The result was the construction of railroads into Louisville from the north, and likewise the construction of railroads from Louisville into the south. Of those reaching Louisville from the north I mention the Chicago, Indianapolis & Louisville, Cleveland, Cincinnati, Chicago & St. Louis,—part of the New York
577 Central system—Pittsburgh, Cincinnati, Chicago & St. Louis—part of the Pennsylvania system—Baltimore & Ohio Southwestern, part of the Baltimore & Ohio system—Chesapeake & Ohio, Southern Railway, and likewise the Louisville & Nashville Railroad from Cincinnati. A casual examination of the map will show that through the medium of these rail lines, Louisville is in direct touch and ready communication with practically all parts of the north east and west. As to those leading south from Louisville, I mention the Louisville & Nashville, Illinois Central, Southern Railway, and Louisville, Henderson & St. Louis. As to the terri-

tory intermediate between Louisville on the one hand and Clarksville and Nashville on the other, taking the line of the Louisville & Nashville Railroad between Louisville and Nashville there is but one common point and by the term common point, I mean a point reached by another railroad. That place is Elizabethtown, Kentucky, 42 miles south of Louisville. Elizabethtown itself, while a junction, is to a very considerable extent, local to the Louisville & Nashville Railroad in that the other line—the Illinois Central—reaches it over a branch road, naturally giving a service between Elizabethtown and Louisville, which cannot, in the nature of the case, be equalled *to* that of the Louisville & Nashville. It is true that the Louisville & Nashville Railroad crosses the Barren River at Bowling Green, Kentucky, and there is river competition at Bowling Green, but that competition is not at all active as between Louisville and Bowling Green, because the Barren River, flowing into the Green River, reaches the Ohio near Evansville, so that the greatest competition at Bowling Green would not be between Louisville and that point, but between Evansville and Bowling Green. Aside from the two points mentioned, Elizabethtown and Bowling Green, the entire intermediate territory between Louisville on the one hand, and both Clarksville and Nashville via the line of the L. & N. Railroad on the other is local. There is, to a limited extent, some cross country competition at a short distance north and south of Elizabethtown between the Louisville & Nashville and the Illinois Central Railroad. There is likewise a small cross country competition, to a limited extent, between the Louisville & Nashville and the Tennessee Central. Louisville, then, has advantages both natural and acquired, which are vastly superior to, and can not fairly or reasonably be compared with the situation at any of the intermediate territories.

Mr. Colston: Please make a similar comparison between Nashville, Tennessee, and Clarksville, Tennessee, and the intermediate points between Nashville and Clarksville on the one hand, and Louisville on the other hand.

Mr. Goodwyn: Nashville, on the Cumberland River, was located in the year 1714 by a French trader, who travelled up the Mississippi River by boat from New Orleans to the mouth of the Cumberland, and then up the Cumberland to a village which was known at the time as French Lick, now called Nashville It is slightly over 200 miles from Paducah by river, and approximately the same distance from the head of navigation on the Cumberland River, in
578 the vicinity of Burnside, Kentucky. Nashville was a very important trading post before ever any railroad was built to, from or through it, and from its location *of* the Cumberland River and its transportation facilities furnished by that *steam* before the building of railroads, it naturally and inevitably enjoyed this advantage over the surrounding country, which must have been fully as great, if not greater, than the conditions since the railroads were constructed.

Prior to the building of railroads in the south, the trading posts and towns located on the water ways and navigable streams had

already become important concentrating and distributing centers in those days, by reason of the-r transportation facilities. Nashville was one of those points. It supplied a considerable territory North, South, East and West, distributing the goods, which had been brought in by river to the early settlers of the territory.

As to its acquired advantages, it should be remembered that in early days the only modes of transportation were by pack trains or by boats, the boats being propelled either by hand, animal or steam power. There was nothing else at the service of our forefathers, and they used what they had to the best advantage. Trade, just like all other activities of the human race—naturally follows the line of least resistance, so that, in early times, the people inhabiting our Southern territory secured their necessaries and such few luxuries as they could afford almost entirely from the older settled and more thickly populated North Atlantic States. The reason for so doing is obvious—it was easier, more convenient and less expensive to handle their goods by the coastwise water craft through the ports of Charleston, Savannah, Darien, Apalachicola, Mobile and New Orleans than by any other method known to those times. The transportation facilities alluded to, though primitive and crude, were, nevertheless, far and away superior to anything at the command of villages and settlements not located upon navigable streams or waterways. Such places as Augusta, Savannah, Nashville and New Orleans were jobbing centers before there was a mile of railroad track built in the South; in fact, those places were then, as now, essentially and necessarily rate basing points, for the cost of ultimate distribution represented and included the charges for getting freight to Augusta, Savannah and Nashville, plus the cost of getting it from those points to its final destination by whatever agency might be employed. As the early movement of freight traffic was from the North Atlantic States via coastwise vessels to the South Atlantic towns for jobbing to the interior, so was the earliest construction of railroads in our territory from those South Atlantic towns to the interior jobbing places already of commercial importance by reason of their location upon the navigable streams.

The first line constructed was from Charleston, S. C. to Hamburg, S. C., a point on the Savannah River just opposite *to* Augusta, Georgia. That road was completed in the year 1834 and its 130 miles of track constituted the longest, continuous line in the same interest then in existence in the world. Augusta, at that time an important trading point, was obtaining its supplies from the
579 East by coastwise vessels to Savannah and thence by boat up the Savannah River. The manifest purpose of the construction of the road was to divert the traffic of Augusta from the Savannah to the Charleston route, and to cut out the water haul up the Savannah river. The railroad, in order to accomplish its purpose, was compelled to haul freight from Charleston to Augusta for approximately the same charge as made by the boats operating on the river from Savannah to Augusta. This was done, but the necessities of the situation at Augusta did not exist at intermediate points between Charleston and Hamburg, so that higher freight

rates were applied to those intermediate points than the rate which had to be established to Augusta; so we have here the interesting and significant *railroad*, there was also the first known instance of non-observance of the long and short haul principle.

Passing over the construction in 1840 of a line of railroad from Branchville, S. C., to Columbia, S. C., at the head of navigation on the Santee River, I mention next the completion in the year 1843 of that part of what is now the Central of Georgia Railway from Savannah to Macon. In 1845 came the road from Augusta (now the Georgia Railroad) to what in this day is called Atlanta. In the year 1850 there was completed from Atlanta to Ross Landing the Western & Atlantic R. R., owned by the State of Georgia, and built in accordance with a Bill passed by the Legislature of that state in 1836. Ross Landing is now called Chattanooga, Tenn. You will note the gradual reaching out from the South Atlantic Coast towards the west to secure what must have been a rapidly increasing business from the Ohio Valley and the Central West. You will note also the new outlet being afforded by this railroad construction for the produce of the Southern territory in the direction of such markets as Memphis and New Orleans.

There was completed in the year 1853 what is now called the Atlantic & West Point R. R. and Western Railway of Alabama, connecting Atlanta, Ga., with Montgomery, Ala., connection being made at the latter point with steamboats operating on the Alabama River to and from Mobile. There was also completed that year the line between Macon and Columbus, Georgia, which point was located at the head of navigation on the Chattahooche River. There was completed in 1854 a branch line of the Central of Georgia from Millen to Augusta, thus finishing an all-rail connection between Augusta and Savannah in competition with the Savannah River. Also in 1854 was completed the line between Chattanooga and Nashville, now operated as part of the Nashville, Chattanooga & St. Louis Railway.

This, in conjunction with the Western & Atlantic Road, still further extended the purpose to serve by rail the interchange of traffic between the Southeast and the Ohio Valley and the West. It must have been a severe blow to the boating interests on the Tennessee River and greatly enhanced the value of those on the Cumberland River as well as the commercial importance of the City of Nashville.

580 In 1855 was completed the old East Tennessee, Virginia & Georgia R. R. from Dalton, Georgia, to Knoxville, Tennessee, at the head of navigation on the Tennessee River.

In 1857, there was completed the old Memphis & Charleston Railroad, now a part of the Southern Railway system, extending from Memphis to Stevenson, Alabama, there connecting with the Nashville, Chattanooga & St. Louis Railway, and operating over its tracks into Chattanooga. Here we have the first all rail connection between the West and Southeast, and I can imagine something of the competition which must have existed between steamboats on the Mississippi River operating to Memphis, and thence in connection with

the Memphis & Charleston Railroad to Chattanooga and its connections to the Southeast, as against steamboats operating on the Ohio and Cumberland Rivers to Nashville, and thence via the Nashville & Chattanooga Road and its connections into the same territory. There is no doubt in my own mind that the severity of this competition had a great deal to do with the extremely low line of rates operated by steamboats on the Cumberland River to Nashville.

Passing over the extension in 1858 of the East Tennessee, Virginia & Georgia Railroad, from Knoxville to Bristol and its connection there with what is now the Norfolk & Western Road, extending to Norfolk, Virginia, I come to the completion in 1859 of the line of the Louisville & Nashville Railroad from Louisville to Nashville. This opened up a new route between the West and the Southeast, and made Louisville by far the most important gateway between the West and the Southeast then in existence. It also vastly increased the commercial importance of Nashville. Since that time a line of railroad has been constructed from Nashville, Tennessee, to Hickman, Kentucky, which is owned and operated by the Nashville, Chattanooga & St. Louis Railway. Another line of railroad in West Tennessee, operated by the N. C. & St. L. Ray., reaches Paducah, Kentucky. There has also been constructed the Tennessee Central Railroad from Nashville, through Clarksville to Hopkinsville, Kentucky, where it connects with the Illinois Central Railroad, that line in turn reaching Paducah, Evansville, Henderson, St. Louis, Chicago and many other points with its own rails. The Tennessee Central on the East was built a number of years ago to a connection both with the Cincinnati Southern and the Southern Railway, thus giving Nashville additional rail connections not only with Eastern Tennessee and Kentucky, but also with Eastern territory generally.

Whatever advantages Nashville originally enjoyed from its location on the Cumberland River were similarly enjoyed by Clarksville, Tennessee, on the same river, and intermediate between Nashvill and the mouth of the Cumberland near Paducah.

Clarksville, as already stated, is reached by the L. & N. R. R. over its Memphis Line, and is likewise reached by the Tennessee Central. In replying to a previous question I spoke of the territory intermediate between Louisville on the one hand, and Nashville and Clarksville on the other hand. The only competitive points
581 in that territory reached by the L. & N. R. R., are Elizabethtown, Kentucky, and Bowling Green, Kentucky, the former being served by the L. & N. and Illinois Central Railroad, Bowling Green being served by the L. & N. R. R. and also by steamboats plying on the Barren River.

Examiner Gaddess: Then there is no question, Mr. Goodwyn, that Bowling Green does enjoy competitive advantages?

Mr. Goodwyn: Yes, sir.

Mr. Colston: With reference to northbound traffic, or traffic from and through Nashville, Tennessee, and Clarksville, Tennessee, to or through Louisville, Kentucky, please explain more particularly the circumstances and conditions of competition which necessitate or justify the making of lower rates between Nashville and Clarksville

on one hand, and Louisville on the other, than apply to or from intermediate points.

Mr. Goodwyn: The Cumberland River is just as much the key to the adjustment of rates northbound from Nashville and Clarksville to Louisville as in the opposite direction. In the earlier days, and when the river afforded the inlet and outlet, the business houses at both Nashville and Clarksville were located on or adjacent to the river banks. Steamboats not only handled business from Louisville to Nashville, but were organized into regular lines that operated in both directions, the boats returning handling whatever was offered for shipment from Nashville. There were not only regular lines of boats operating between Nashville and Louisville, but also between Nashville and St. Louis, and other points. In this way there was not only the competition on the Cumberland River between Nashville and the mouth of the river near Paducah, but likewise the competition between the various markets serving Nashville, and which bought or handled shipments made from Nashville. Louisville, for example, competed with Evansville in handling shipments moving from Nashville, and when rail connection was established between Nashville and the Ohio River, the railroads simply accepted the situation they found, which had been previously created by the transportation lines operating on the river. This situation the railroads have never felt justified in attempting to change, even if they could have done so without reviving in all of its activity and potency, the competition which existed in former years with the boats operating on the river. There is no such situation with respect to business moving from Nashville to points intermediate to Louisville, or from Clarksville to points intermediate to Louisville. The only character of competition, if any there be, is one of market, that is, Nashville, in undertaking to supply the territory intermediate to Louisville, would compete with Louisville, with Evansville, Clarksville, etc., so that the intermediate adjustment is a relative one rather than a competitive one; and with rates from Nashville and from Clarksville to the intermediate territory established on a fair relative basis with Louisville, Evansville, etc., distance being the principle factor, each community is left to reap the benefit of its own energy and
582 enjoy the trade of that particular section naturally tributary to it. So much for business moving from Nashville or Clarksville to points intermediate to Louisville.

With respect to traffic originating at those intermediate points and moving to or through Louisville: There is no competitive condition to be met, and the only rate influence that is exerted at all is of product with product. We believe that the steady, normal and healthy growth and prosperity of this intermediate territory is ample evidence to show that the rates upon which its products move are sufficiently low to meet all of the necessities of the situation.

Examiner Gaddess: Mr. Goodwyn; do you charge any higher rates from an intermediate point to Louisville than from Louisville on traffic destined to Nashville or Clarksville or other points?

Mr. Goodwyn: I am speaking of the northbound rates now, Mr Examiner.

Examiner Gaddess: Well, then, take it in the northbound direction. Do you charge any higher rates from a point intermediate to Nashville or Clarksville, to or through Louisville than you do from Nashville or Clarksville?

Mr. Goodwyn: Yes, sir; in other words, our rates from Galeton, Tennessee, to Louisville, are higher than from Nashville to Louisville.

Examiner Gaddess: Have you prepared any statement, Mr. Goodwyn, to show the rates?

Mr. Goodwyn: No, sir, I have not. I did not prepare rate exhibits for the hearing at all, because, as intimated by Mr. Colston, in his remarks, evidence of exhibits of that kind are being so extensively filed in the other Fourth Section hearings, we felt we would be simply duplicating the records, and adding to the difficulty.

Examiner Gaddess: That may be true, Mr. Goodwyn, but it will be necessary for us to know just to what extent these intermediate points are discriminated against. But if you can prepare such a statement covering this hearing today, and let us have it at a very early date, it will greatly facilitate the determination of this matter we are hearing today.

Mr. Goodwyn: I would state this, that such an exhibit would be largely a reproduction of the exhibits which are now on file already with the Commission.

Examiner Gaddess: I know, Mr. Goodwyn, but we cannot go through these tariffs in every case to determine what excesses are charged, and it would greatly facilitate our work if you could file such a statement with us. In fact, the Commission now requires that.

Mr. Goodwyn: I should be very glad indeed to file any exhibits, Mr. Examiner, that will throw any light at all upon it. I am giving the reasons of the situation, and not the specific rates themselves.

Examiner Gaddess: But we also, in addition to the reasons, desire to have the statement showing the excesses.

Mr. Goodwyn: I shall be very glad to prepare and file with the Commission, whatever exhibits may serve to illustrate——

Examiner Gaddess: How long would it take you to prepare such an exhibit?

583 Mr. Goodwyn: I should say as to those you have referred to, they could be easily filed within a week.

Examiner Gaddess: I wish you would, please. You understand, Mr. Goodwyn, that this statement is to apply both from and to intermediate points.

Mr. Goodwyn: Yes, sir. There is no restriction imposed upon the territory by reason of the freight rates, and so far as any manufacturing interests are concerned, while the territory is not a manufacturing one, still, to the extent that such industries exist, the rates upon the product are made to meet the competition of that product.

I would like to state as to Bowling Green, excepting that point from the general situation—the competitive conditions which exist, and by reason of boats operating on the Green and Barren Rivers, has been made in the adjustment of our rates from Bowling Green

to that situation itself. It has had no relation whatever to the situation at Nashville, or to the situation at Clarksville, nor has it had any relation to the local situations on the other side, and inasmuch as you have asked, Mr. Examiner, for a statement to be filed showing to what extent our rate- from Nashville to Louisville are lower than intermediate territory, and likewise in the opposite direction, I think perhaps you may want a similar statement to show to what extent our rates from Bowling Green to Louisville are less than the rates from the intermediate territory.

Examiner Gaddess: Yes, sir, that statement would be helpful.

Mr. Goodwyn: And likewise in a reverse direction.

Mr. Colston: Please explain, right at this point, whether any relief has been granted by any governmental agency other than the Interstate Commerce Commission, with respect to the rates from Bowling Green?

Mr. Goodwyn: Yes, sir, by the Kentucky Railroad Commission as to rates between Louisville and Bowling Green.

Mr. Colston: Was that because the rates to Bowling Green were less than the rates to intermediate points?

Mr. Goodwyn: Yes, sir, because the state of Kentucky has a strict long and short haul rule——

Examiner Gaddess: How long has Bowling Green enjoyed lower rates than points intermediate to Bowling Green?

Mr. Goodwyn: Well, I can only speak from my personal knowledge which goes back to 1894. I think it existed long prior to that time. The long and short haul was not that far back.

Examiner Gaddess: That commission recognized the competitive conditions at Bowling Green as justifying lower rates than to intermediate points, at which the same conditions did not exist?

Mr. Goodwyn: Yes. There is another instance that might be mentioned, which is furnished right here at Bowling Green, Kentucky. The L. & N. R. R. has a certain character of water competition at Bowling Green, and that such competition has been
584 fully met is conclusively proven by the fact that, of all of the business outbound from Bowling Green, 95 per cent of it moves by the L. & N. R. R., and 5 per cent by river.

Mr. Colston: Mr. Goodwyn, can you give a concrete illustration of the competitive influences by water, by rail or otherwise, which affect a shipment from or through Nashville or Clarksville, to or through Louisville, Kentucky, which does not affect shipments to or from intermediate points?

Mr. Goodwyn: I believe I can, sir. Take first business moving through Nashville, and for the purpose of the illustration I will use lumber. As already stated, Nashville is about 200 miles by river from the head of navigation on the Cumberland, and there are large quantities of timber along the banks of the river in that territory. There is a line of boats operating between a certain portion of the Upper Cumberland River and Nashville, so that the lumber produced along the river becomes competitive as between the two boat lines operating to Burnside and to Nashville. There are no concentrating yards at Burnside, Kentucky, and the lumber moving from the

Upper Cumberland River via that crossing is loaded there on the cars and handled direct to Cincinnati, from whence it is distributed throughout the Northern and Eastern states. This method of handling is not carried on through Nashville. The lumber is brought to Nashville for account of firms located at that point, and in order that it should become actively competitive with the lumber which moves via Burnside, it is necessary for it to be yarded, graded, inspected and dried at Nashville, subsequently reshipped from that point in competition with the reshipment from Cincinnati.

Now taking business originating at Nashville proper: There is, furthermore, a very large movement of staves from Nashville by river to and via Paducah going to points beyond. This competition has to be met by the making of rates from Nashville by rail to and through Evansville and Louisville.

As to Clarksville, Tennessee, I could illustrate the same principle in connection with the tobacco trade, which is probably the principal industry of that section of the country. Tobacco moves from Clarksville by river, and could and would move to an even greater extent but for the rail rates which have been made necessarily by the river competition.

There is another kind of competition which affects the rates, and that is the competition of rail carriers as between themselves, which also covers the competition of market with market. The business moving out of Nashville and Clarksville is competitive as between the different carriers, and is likewise competitive as between the different communities which those carrier- serve. Chicago, in the West, competes with New York in the East, and the railroads handling business to Chicago via Louisville compete with the railroads handling business to the East either via Louisville or via Nashville and Knoxville. The same is true as to Clarksville.

There is still further, direct rail competition of one line with another. Take business moving from Nashville to Chicago, for instance, which is handled either via the L. & N. R. R. through
585 Louisville or Evansville, via the Nashville, Chattanooga & St. Louis Railway through Paducah, or through Cairo, via the Tennessee Central Railroad in connection with the C. N. O. & T. P. through Cincinnati, or via its connection at Hopkinsville with the Illinois Central Railroad to Chicago. The same can be said of business moving to Cleveland, Ohio, from Clarksville, which is competitive as between the L. & N. R. R. via the routes through Evansville, Louisville and Cincinnati, with the Tennessee Central via its routes through Hopkinsville and through Nashville. There are no such competitive conditions as these existing at any points intermediate between Nashville and Clarksville on the one hand, and Louisville on the other.

Examiner Gaddess: Mr. Goodwyn, is it your opinion that all of these competitive conditions you speak of justify you in charging a higher rate from intermediate points than from the more distant points?

Mr. Goodwyn: Yes, sir. I might illustrate that in a way taking Louisville and Nashville, if you please, as points which would serve for that purpose. Originally, business from Louisville to Nashville,

moved down the Ohio River to the mouth of the Cumberland, and thence up the Cumberland River to Nashville by boat. That was before there was any railroad established at all. When the railroad was established it had to meet those rates if it expected to handle any business to Nashville. There was no river serving Elizabethtown, Kentucky, except to the extent that Elizabethtown might be able to ship by railroad to Louisville, and thence by boat. Similarly, there was no river serving Galeton, Tennessee, except as the Ohio and Cumberland was or could be utilized through Nashville, and thence by rail up to Galeton. When the railroads were built they did, just as every common sense business man does to-day, *met* the competition that they found. They did not carry it any further. They did not make any useless or unnecessary sacrifice to their revenue any more than a business man to-day sells his goods any cheaper than he has to merely because at some other point he meets competition, which does not exist at the point where he tries to sell his goods.

Now the railroads did not then and they do not believe now that the competition which originally fixed the rates from Louisville to Nashville should be bodily moved to Elizabethtown, Kentucky. It don't exist there, and it never has existed there, and there is nothing to justify its establishment there, save from some competitive conditions. Now that competitive condition can be two or three fold. It can be competition with another railroad that would reduce rates. It can be competition of product with product. That is to say, if Elizabethtown, Kentucky, is shipping something to Nashville, it would seem to be in competition with the same commodity shipped from Louisville to Nashville.

Now the manufacturing interests are taken care of by the establishment of rates from the next farthest competing point.

Examiner Gaddess: Mr. Goodwyn, isn't he prohibited from selling anything in Nashville; isn't Elizabethtown prohibited
586 from selling anything in Nashville. It has higher rates to Nashville than to Louisville.

Mr. Goodwyn: No, I think not. It is not the rate question that prevents it from selling. On its manufacturing product, it would have a lower rate.

Examiner Gaddess: In the case where a manufacturer's product would be started on your line, you would give them a rate no higher than——

Mr. Goodwyn: Its furthest point, no. I have always done it.

Examiner Gaddess: Well, then, in that connection you would have no objection to applying rule 77 in such a case.

Mr. Goodwyn: We do not apply rule 77, as a matter of fact. We would seek to obtain relief. Let me illustrate in this way, Mr. Examiner. If there were a commodity moving at Elizabethtown that is also moved at Louisville and it sought to enter the Nashville market, the Louisville & Nashville Railroad would be willing to make the same rate from Elizabethtown to Nashville, as from Louisville to Nashville, but it would not be willing to make the rate from Elizabethtown to Nashville apply to Galeton, because the rate from

Elizabethtown to Galeton is higher than from Elizabethtown to Nashville.

Consequently we would not be willing to apply rule 77.

Mr. Colston: Please make a similar explanation with reference to the southbound traffic from or through Louisville, to or through Nashville or Clarksville, as compared with southbound traffic to or from intermediate points, and give some concrete illustrations.

Mr. Goodwyn: Well, the same conditions which I have already mentioned in connection with the northbound traffic exist in the reverse direction, except that the competition between carriers southbound on business through Louisville is even more acute and aggressive than northbound, for the reason that there are a greater number of such carriers. Take business, for example, from Chicago, Illinois, going to Nashville. That business is competitive via Cincinnati as between the Erie Railroad, the Big Four and the Pennsylvania. It is competitive via Louisville as between the Big Four, the Pennsylvania and the Monon. It is competitive via Evansville as between the Illinois Central and the Frisco Lines. It is competitive via Paducah as between the Illinois Central and the C. B. & Q. R. R. It is competitive via Cairo as between the Illinois Central and the Mobile & Ohio in connection with the Chicago & Alton, Wabash, Burlington and other roads. It is competitive via St. Louis to some extent, and each one of these various crossings—Cincinnati, Louisville, Evansville, Paducah, Cairo and St. Louis—is competitive with the other, and served, in numerous instances, by competing lines. There is no such condition as that existing with respect to traffic moving from the intermediate territory.

Mr. Colston: Mr. Goodwyn, I will ask you whether, in your opinion, the rates to and from stations intermediate to Louisville, Nashville and Clarksville are reasonable or unreasonable in and of
587 themselves, and to give some of the reasons upon which your opinion is based.

Mr. Goodwyn: I consider those rates as reasonable in and of themselves. In my judgment a rate that is reasonable in and of itself is one that does not impose an arbitrary and exorbitant burden upon traffic and thereby act in restraint of trade. It does not impede the natural and healthy growth of the traffic. It is one that does not yield to the carrier an excessive and unusual profit considering either the cost or the value of the service performed. Measured by any or all of these standards, I am convinced that these intermediate rates are, as I said before, just and reasonable in and of themselves.

Mr. Colston: How do these rates to and from intermediate points compare with other rates applied under substantially similar circumstances and conditions?

Mr. Goodwyn: Taking the territory in the south,—and I do not believe that it would be proper to compare rates in that territory with rates in other territories—I am of the opinion that the rates are not only reasonable per se, but reasonable by comparison. In the first place, they are made not higher, and in many cases considerably

less, than the Louisville & Nashville Railroad's mileage scale, which scale is the general basis for the company's local rates.

Examiner Gaddess: You say the local mileage scale is the general basis for local rates?

Mr. Goodwyn: Yes. These are in many cases considerably less than their scale—these intermediate rates. That scale itself I regard as reasonable, and it has certainly stood the test of actual service for a great many years. They are not greater, and in many cases less, than the rates applied for similar service in this territory not only by the L. & N. Railroad, but also by other railroads. They are made with due regard to whatever competitive influence is exercised by the navigable streams such as the Cumberland River, the Green and Barren Rivers, and the competition on those rivers is reflected to a certain extent in the rates applicable to and from the intermediate territory referred to. They are also made with due regard to whatever influence is exerted by cross country competition, that is, by proximity of other lines to ours.

Mr. Colston: Are the rates between Nashville and Clarksville and Louisville, applying on traffic from or to, through or between those points any lower than are necessary to meet the competitive conditions existing at those points?

Mr. Goodwyn: Generally speaking, they are not. There may be some cases where the rates might reasonably be advanced. There are some instances where rates have been established lower than I thought was necessary——

Examiner Gaddes (interrupting): You mean at the competitive points?

Mr. Goodwyn: Yes, and we protested against them at the time, but the competitive influences already mentioned were ex-
588 erted, and my opinion did not prevail. Consequently, so far as the Louisville & Nashville Railroad is concerned, none of those rates are lower than necessary to meet the competition—to meet the competitive conditions that exist.

Mr. Colston: Well, now, in view of your answer, I will put the question another way and ask you as to the rates applying by the Louisville & Nashville Railroad. Are the rates between those competitive points, Louisville, Nashville and Clarksville, any lower than it is necessary than they should be to meet the competition which the Louisville & Nashville Railroad experiences at those points?

Mr. Goodwyn: No, sir, they are not any lower.

Mr. Colston: Mr. Goodwyn, when was the very first instance in the history of the Louisville & Nashville Railroad, in which a rate to a farthest distance point was reduced?

Mr. Goodwyn: The first instance I know of in the Louisville & Nashville Railroad occurred after completing its lines in 1859. The rates of the Louisvile & Nashville Railroad were at that time controlled by its Board of Directors, and when the Louisville & Nashville Railroad Company completed the line to Nashville, its rates from Louisville to Nashville were made on a progressive scale—that is to say, without in any case lower than the rate to any intermediate point. In the very first annual report submitted to the

Board of Directors filed by the superintendent, he asked authority from the Board of Directors to reduce the rate between Louisville and Nashville, so that he could meet the boat competition, the rates established not being sufficiently low to enable the Louisville & Nashville Railroad to get the business. That authority was extended to the Superintendent, and the rates were accordingly lowered.

Mr. Colston: That was in 1859?

Mr. Goodwyn: It was about perhaps 1860, the year after the completion of the road.

Mr. Colston: Are the rates to or from intermediate points any higher than the lowest combinations which can be made on Louisville, Clarksville or Nashville?

Mr. Goodwyn: Not to my knowledge in any case. There might be some instances where this would be so, but we are prepared to correct those instances whenever brought to our attention.

Examiner Gaddess: Are there any complaints now on file with the Commission, Mr. Goodwyn, against any of your intermediate points between Louisville and Clarksville and Nashville, other than the Bowling Green Protective Business Men's Association complaint?

Mr. Goodwyn: Not to my knowledge. It is the only one of which I have any knowledge.

Examiner Gaddess: Mr. Thomas, do you desire to examine Mr. Goodwyn?

Mr. Thomas: One or two questions. I will waive any objection heretofore made.

Mr. Goodwyn: When you speak of Bowling Green having received relief from the Railroad Commission of Kentucky, you do not mean there has been any specific relief as to any rates?

589 Mr. Goodwyn: Yes, sir, that is what I do mean.

Mr. Thomas: Rates fixed by the Commission?

Mr. Goodwyn: Not rates fixed by the Commission, but the Commission approved certain rates.

Mr. Thomas: The Commission approved certain rates on application of the Louisville & Nashville Railroad?

Mr. Goodwyn: No, an application of the Louisville & Nashville Railroad, on application of the Louisville Board of Trade.

Mr. Thomas: But the rates were fixed by the Louisville & Nashville Railroad, and the Commission approved them to the extent that they relieved Bowling Green from the operation of the long and short haul clause in Kentucky?

Mr. Goodwyn: Relieved the Louisville & Nashville Railroad.

Mr. Thomas: Was it not the adjustment of rates on the Louisville & Nashville which was dictated by the Louisville & Nashville Railroad that was declared void because of the Railroad Commission of Kentucky having no power to review and fix rates on railroads?

Mr. Colston: I object to the question.

Examiner Gaddess: Your objection may stand noted.

Mr. Goodwyn: As far as I am concerned, Mr. Examiner, I don't recall the question, and therefore cannot answer.

Mr. Thomas: The point we are making is that Bowling Green has received no relief from this Railroad Commission of Kentucky by

way of reduction in any of the rates. The attempt to review and reduce rates on the part of the Louisville & Nashville Railroad Company has been declared void by the U. S. Supreme Court.

Mr. Colston: I would like to confer with Mr. Gwathmey. I would like to put Mr. Bryan on to show one element of competition which has been disputed in the other case, which I will show affirmatively now.

E. K. Bryan, Jr., was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Colston: Please state your name, residence and occupation.

Mr. Bryan: My full name is E. K. Bryan; Assistant General Freight Agent of the Illinois Central Railroad, Memphis, Tennessee.

Mr. Thomas: He says he wants to introduce this witness to prove a fact which is distributed in the other case. I object to his now taking up as rebuttal things that were taken as evidence in that case.

Examiner Gaddess: Your objection will be noted, Mr. Thomas.

Mr. Colston: Mr. Bryan, I will ask you whether or not your road in connection with the Nashville, Chattanooga & St. Louis Railway, competes with the Louisville & Nashville Railroad for business in and out of Nashville, Tennessee?

Mr. Bryan: Yes, sir.

590 Mr. Colston: I will ask you whether or not your road in connection with the Tennessee Central Railroad competes for business into and out of Nashville and Clarksville, Tenn.

Mr. Bryan: Yes, sir.

Examiner Gaddess: I do not think there can be any question about that, Mr. Colston.

Mr. Colston: I didn't think so either, your Honor, but there has been an attempt made to draw an inference to the contrary.

Examiner Gaddess: We all know that all of these railroads compete for traffic wherever they can get it.

Mr. Thomas: The record shows that there has been no change whatever in the Nashville rates since the construction of the Tennessee Central, as compared with the rates existing before.

Mr. Colston: That is all the Louisville & Nashville Railroad has to offer.

Examiner Gaddess: Have you any other witnesses, Mr. Colston?

Mr. Colston: Not now, unless we need some in rebuttal. That is all the Louisville & Nashville Railroad has to offer, unless we have to introduce something to meet our opponent's offer.

Examiner Gaddess: Do any other defendants desire to be heard?

Mr. Gwathmey: We understand, Mr. Examiner, that the testimony of Mr. Goodwyn has covered our case, and we do not desire to offer any additional evidence.

Examiner Gaddess: Then there are no other witnesses for the rail-

road or any of the connections that have been cited as parties to this application.

Mr. Thomas: Have you any witness you desire to put on the stand?

Mr. Thomas: Mr. Examiner, we think that the Bowling Green case known as I. C. C. Docket No. 4310 could be decided and asks for a decision granting the relief prayed for in that case based on Section 1 and Section 3 of the Act to Regulate Commerce, and especially on Section 3, without reference to this Section 4.

Examiner Gaddess: I do not think there can be any doubt about that, Mr. Thomas, but before passing upon Section 4, it is the duty of the Commission to pass upon the application protecting those rates.

Mr. Thomas: However, we do not waive any complaints which are made, which properly come within the perview of Section 4 of the Act, and without waiving our objections heretofore made to the introduction of evidence affecting any issue already heard, we ask now that the entire record in the case of the Bowling Green Business Men's Protective Association of Bowling Green, Kentucky, against the Louisville & Nashville Railroad Company, et al., I. C. C. 43170 including the briefs of complainant and reply brief of complainant, which we now file marked Exhibit 1 and Exhibit 2 to be considered and made a part of the record in this case and offered by us.

Examiner Gaddess: That is, without duplicating in this record the record in the Bowling Green case?

591 Mr. Thomas: Yes.

Examiner Gaddess: To that I can see no objection, because the Commission had that record in its files, and can refer to it. Is there anything further, gentlemen?

Mr. Thomas: That is all.

Examiner Gaddess: The hearing stands adjourned.

Mr. Colston: I want the testimony of Mr. Fulton and Mr. Goodwyn put in the record, and made a part of the record.

Mr. Thomas: The same way with the whole record.

Examiner Gaddess: Do you desire to file briefs and have oral arguments?

Mr. Colston: I would like to file a brief, and have oral argument.

Examiner Gaddess: That is a matter I will have to take up with the Commission and advise you of later.

Mr. Colston: I would like to file a brief then.

Examiner Gaddess: You may do that, Mr. Colston. How much time would you desire in which to file this brief?

Mr. Colston: I would like twenty days.

Examiner Gaddess: Couldn't you make it in ten days?

Mr. Colston: I can, if it were not that I have other engagements to prevent my giving immediate attention to it. However, Mr. Examiner, if the Commission desires to pass on this thing speedily in order I will waive the filing of a brief.

Examiner Gaddess: If you desire to file a brief, we want to give you that opportunity.

Mr. Thomas: The whole issue, as far as Bowling Green is concerned, was made the subject of argument before.

Examiner Gaddess: The same conditions exist as to all other intermediate points which you have covered in your brief as to Bowling Green, do they not?

Mr. Colston: Well, there are a few things I would like to bring out, which I have not had opportunity to.

Examiner Gaddess: It seems to me, Mr. Colston, that you have covered pretty thoroughly this entire situation, and I don't know what additional information you can give us that would assist us in a brief other than what Mr. Goodwyn has already stated in his testimony.

Mr. Colston: I think we can brief the points, and it — not be necessary to go to the extent of making an elaborate transcript of testimony.

Examiner Gaddess: Could you do that inside of a week or ten days?

Mr. Colston: I could, were it not for the fact that I have other engagements that require my immediate attention and I cannot start on this brief within seven days, but as soon as I commence the preparation of the brief I can finish it within ten days, therefore I ask for 20 days.

Examiner Gaddess: I take the responsibility of allowing you twenty days, and I hope that will be satisfactory to the Commission.

592 Mr. Thomas: What about us having an opportunity to reply, if we desire? I hardly think I will want to reply.

Examiner Gaddess: Well, if you find after you have received a copy of Mr. Colston's brief that you desire to reply to it, you can make a motion, and you will be given that opportunity.

Mr. Thomas: That will be satisfactory.

(Whereupon, at 11:30 A. M., on the 29th day of April, 1912, the hearing in the above entitled matter was closed.)

Interstate Commerce Commission. Docket No. —. 4th Sec. Exhibit No. 1. Witness —— ——. L. & N., Defendant. Date, 4/29/12. Steno. Sperck. Filed Feb. 16, 1912.

Before the Interstate Commerce Commission.

I. C. C. Docket No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,
versus
LOUISVILLE & NASHVILLE RAILROAD COMPANY et al.

Brief for Defendants.

W. A. Colston, D. P. Connell, Attorneys for Defendants as of Record.
Albert S. Brandeis, of Counsel.

Table of Contents.

PART I.

Statement of the Case.

	Page
The Complaint	1
The Issues	3

PART II.

Abstract of the Evidence and Comments Thereon.

Qualifications of Complainant's Witnesses and Defendants' Witnesses, Respectively, to Testify as to Facts in Issue	4
General Relative Situation as to Competition and Transportation Facilities at Bowling Green, Ky., Nashville and Clarksville, Tenn., Louisville, Ky., and Evansville, Ind	10
Bowling Green Compared with Nashville and with Clarksville	12
General comparison	12
593 The competitive effect of the Green and Barren rivers at Bowling Green, Ky., compared with the competitive effect of the Cumberland River at Nashville and Clarksville, Tenn.	24
The Cumberland River	27
The Green and Barren Rivers	35
There exists at both Nashville, Tenn., and Clarksville, Tenn., railroad competition, intensified by competition of markets, but no such competition exists at Bowling Green, Ky	49
Bowling Green Compared with Evansville and with Louisville	59
General comparison	59
The competitive effect of the Green and Barren rivers at Bowling Green, Ky., compared with the competitive effect of the Ohio River at Evansville, Ind., and Louisville, Ky.	61
The Ohio River	62

Page

There exists at both Evansville, Ind., and Louisville, Ky., railroad competition, intensified by competition of markets, but no such competition exists at Bowling Green, Ky. 63
How the Rates are Made 64
From Ohio River crossings 64
On commodities outbound 66
Relative importance of the traffic moving into Bowling Green on the commodity rates 67
From Chicago, etc 67
From the East, New York, etc 70
From St. Louis 71
On commodities shown in paragraph IX of the complaint 71
On sugar from New Orleans 72
On eggs and dressed poultry to New York, and tobacco to Cincinnati, Evansville, Louisville and Memphis ... 73
On oranges from Jacksonville, Fla 74
On cattle and hogs to Chicago, Ill 77
The proportional rates applicable on business from Chicago to the southeast 77
To Atlanta, Ga., Montgomery, Ala., and Jackson, Miss. . 82
Previous Consideration of the Same Problems 90
The Rates to and from Bowling Green are Reasonable in and of Themselves 90
The Rates to and from Clarksville and Nashville are Not Lower than Necessary 93
The Rates to and from Bowling Green Meet the Competition at that Point as Far as Necessary 94
Alleged Control of the Transportation on the Green and Barren Rivers by the Louisville & Nashville Railroad Co 95

594 PART III.

Argument.

The Issues as Narrowed by Complainant's Brief 101
There is Water Competition at Louisville, Ky., Evansville, Ind., and Nashville and Clarksville, Tenn., which Does Not Exist at Bowling Green, Ky 103
There is at Louisville, Ky., Evansville, Ind., and Nashville and Clarksville, Tenn., Competition of Carrier with Carrier, Intensified by Market Competition, and there is No Such Competition at Bowling Green, Ky 104
The Rates Complained of are Reasonable in and of Themselves, and the Louisville, Evansville, Nashville and Clarksville Rates are no Lower than it is Necessary that they Should be in Order to Meet the Competition Existing at those Points 105
The Bowling Green Rates Meet the Competition Existing at that Point as Far as it is Necessary so to Do 106
Conclusion 107

Before the Interstate Commerce Commission.

I. C. C. Docket No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KY.,
versus
LOUISVILLE & NASHVILLE RAILROAD COMPANY et al.

Brief for Defendants.

PART I.

Statement of the Case.

This case was heard before Special Examiner, G. P. Boyle, at Bowling Green, Ky., November 27th and 28, 1911.

The Complaint.

The complaint covers rates to and from Bowling Green, Ky., as compared with rates to and from Clarksville, Tenn., Nashville, Tenn., Louisville, Ky., and Evansville, Ind., as follows:

To Nashville:

From Chicago,	Paragraphs V, VII, XIV.
From New York,	Paragraphs VI, VII.
From St. Louis,	Paragraph VIII.
From various points on commodities,	Paragraph IX.

595

To Clarksville:

From Chicago,	Paragraphs V, VII, XIV.
From New York,	Paragraphs VI, VII.
From St. Louis,	Paragraph VIII.
From various points on commodities,	Paragraph IX.

To Louisville:

From New Orleans,	Paragraph X.
From Jacksonville,	Paragraph XII.

From Nashville:

To various points north,	Paragraph XI.
To Chicago (cattle and hogs),	Paragraph XIII.
To Atlanta, Montgomery, Jackson,	Paragraph XV.

From Evansville:

To Atlanta, Montgomery, Jackson,	Paragraph XV.

From Louisville:

To Atlanta, Montgomery, Jackson,	Paragraph XV.

The complaint alleges that the rates set forth are unjust and unreasonable and in violation of Section 1 of the Act to Regulate Commerce, as well as discriminatory and in violation of Sections 3 and 4 of the Act. And complainant prays that defendants be required to cease and desist from charging the present unreasonable and excessive rates to and from Bowling Green, Ky., as well as that the Commission adjudge said rates to be unduly prejudicial and establish just and reasonable rates to and from the city of Bowling Green as related to Nashville and Clarksville, Tenn., Louisville, Ky., and Evansville, Ind.

The Issues.

Not one word as to the unreasonableness of the rates per se appears either in the testimony introduced by complainant or in complainant's brief, and it is clear that the real issue is one of unjust discrimination which is alleged by complainant to exist because the rates to and from the city of Bowling Green are not established with proper relation to the rates to and from Nashville, Clarksville, Louisville and Evansville, while defendants deny that any undue discrimination exists.

Complainant alleges (Paragraph XVIII of the complaint) "that the circumstances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Ky., are substantially similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tenn., Evansville, Ind., and Louisville, Ky. And this allegation is denied by defendants.

596 PART II.

Abstract of the Evidence and Comments Thereon.

Qualifications of Complainant's Witnesses and Defendants' Witnesses, Respectively, to Testify as to Facts in Issue.

Complainant introduced as witnesses, W. C. Sumpter, Samuel Cristal, R. C. Duncan, A. S. Hines, B. G. Davidson, M. H. Crump, R. W. Smith, H. D. Graham, and E. A. Greer, who, although estimable business men and citizens of Bowling Green, all showed that they were not in any way qualified to testify as to the facts in issue, the similarity or dissimilarity of the circumstances and conditions which surround the transportation of traffic to and from the city of Bowling Green, Ky., as compared with the circumstances and conditions which surround the transportation of traffic to and from the cities of Clarksville and Nashville, Tenn., and Louisville, Ky., and Captain E. W. Bewley, who, although he is probably an expert navigator, was shown to be entirely without qualification to testify as to financial or traffic matters, or the making or relation of rates. It was shown that every boat in charge of whose operations Captain Bewley had been, had made a failure, had been tied

to the bank, and had been sold by the United States Marshal, and that the only other enterprise in which he was shown to have engaged was abandoned because "it ceased to be a paying business" (Bewley, deposition p. 29).

Defendants' witnesses, Charles E. Fulton and D. M. Goodwyn, were both shown to be men of long experience in the matters concerning which they gave their evidence, fully qualified in every way to speak as to the matters in controversy.

Complainant's introduction of evidence partook of the nature of a town meeting, in which the witnesses mingled irresponsible hearsay and gossip with their opinions as to matters concerning which they were not qualified to speak.

Defendants' evidence was competent and to the point.

Mr. W. C. Sumpter, who is President of the Bowling Green Business Men's Protective Association, and who signed the complaint in this case, testified as follows (Tr., pp. 48 and 49) with respect to that dark plan which we are informed by complainant in its brief (p. 28) was conceived by the Louisville & Nashville Railroad Company coincident with the arrival of the Government in Green and Barren Rivers, and which complainant says constitutes the subject of this litigation:

"Mr. Thomas: What is the common knowledge, report or understanding in Bowling Green as to the control of the river by the Louisville & Nashville Railroad Company?

"Mr. Sumpter: Do you mean what do the citizenship of Bowling Green—who they think owns it and controls it?

"Mr. Thomas: Yes, sir?

"Mr. Sumpter: The L. & N. Railroad Company.

597 "Mr. Thomas: How long have they been of that opinion?

"Mr. Sumpter: Ever since they bought this packet line and after the Government took possession and freed the river and kept up and maintained the locks and made it easy sailing for somebody to go in; that is the general opinion of the public here—that was your question?

"Mr. Thomas: I said common report?

"Mr. Sumpter: Yes, sir.

"Examiner Boyle: Do you concur in that opinion?

"Mr. Sumpter: Yes, sir.

"Mr. Thomas: And one thing that sinks in and gets firmly fixed in the mind of the community—that is what a common report is," etc.

Here complainant introduced by its chief witness, on the point it says is the "subject of this litigation," a piece of flimsiest gossip, shown afterward to be absolutely without foundation. If the attorney for complainant and the President of the Bowling Green Business Men's Protective Association did not mean by these questions and answers to indicate that the Louisville & Nashville Railroad Company had "bought this packet line" and, through its ownership of that line, controlled the river, the examination was obviously without meaning; and it was subsequently shown that the Louisville & Nashville Railroad Company has no interest in the packet line

whatever. Complainant's own witness, R. C. Duncan, testified (Tr. p. 326) that he had been told by Mr. Williams, who said he was one of the owners of the Evansville & Bowling Green Packet Line, that the Bowling Green people were wrong in their opinion that the railroad company owned the boats, that the boats belonged to him (Capt. Williams) and to Capt. Howell, or to Capt. Williams' sons and Capt. Howell, or something like that. And Mr. D. M. Goodwyn testified (Tr., pp. 378, 453, 464) that the railroad company did not have any interest in the boats. Mr. Sumpter also testified (Tr., p. 32) that the rates of the Steamer Sun were rates stipulated by the merchants of Bowling Green, and it was shown subsequently (Tr., pp. 60, 256, 267, 377) that the rates charged by the Evansville & Bowling Green Packet Company are substantially the same as those rates which the Bowling Green merchants stipulated for their own boat, the Steamer Sun. Mr. Sumpter admitted (Tr., p. 51) that he did not know anything about the history of the adjustment of the rates to Nashville and Bowling Green, but (Tr., p. 52) he did not know the adjustment was actuated by the steamboats operating on the Cumberland River, but he didn't know anything about the conditions which led to granting Nashville lower rates than Bowling Green; (Tr., p. 53) that he did not profess to be an expert traffic man in giving his testimony of the facilities afforded by the Green and Barren Rivers, that he did not know how much of the freight received at Bowling Green arrives there by river; that he did not know how much of the freight which reached Bowling Green just after the completion of the Louisville & Nashville line from Bowling Green to Louisville arrived there by river; (Tr., p. 54)
598 that he did not know whether Mr. Lee Howell has any jurisdiction over rates from Louisville to Bowling Green or over the main line rates, that he did not know just exactly what his connection with the railroad company is; (Tr., p. 55) that he did know that Mr. D. M. Goodwyn is General Freight Agent of the Louisville & Nashville Railroad Company; that he did not know anything about the history of the adjustment of rates between Clarksville and Bowling Green; (Tr., p. 56) that he did not know anything about the location of the industries at Clarksville, that he knew very little about the city of Clarksville; (Tr., p. 58) that he did not know what kind of distributing market Nashville was before the railroad reached there; that he did not know anything about Bowling Green as a distributing market before the railroad was built; (Tr., pp. 61, 62) that he did not know anything about the effect of the Green and Barren Rivers on rates at other railroad crossings; (Tr., p. 65) that what he had testified as to the ownership of the packet line was merely hearsay; (Tr., p. 86) that he had jobbed in Livermore, which is another station on the navigable part of the Green River; that he had sold goods to the United States Government and delivered them in Louisville in spite of the alleged unfavorable rates that he had at Bowling Green; that Rockport and Livermore are intermediate stations on the river between Bowling Green and Evansville, and on the route of the Evansville & Bowling

Green Packet Line, and that the Evansville & Bowling Green Packet Line carries freight to Rockport and Livermore; (Tr., p. 89) that as to his historical statements, he just agreed with Mr. Thomas; (Tr., p. 90) that he did not know of any special cases where he had not been able to get into territory that he thought rightfully belonged to him on account of the rates applying into and out of Louisville, Nashville and Clarksville.

And so it was with complainant's other witnesses. The utter lack of value of the great mass of testimony put in by complainant is probably nowhere more strongly emphasized than in the fact that in complainant's brief practically no direct references are made for facts testified to by their witnesses, and almost complainant's entire argument is predicated, not upon the facts shown by the testimony in this case, but upon facts found contrary to the findings of this Commission by Judges Severens and Taft in overruled cases, the finding of which facts by Judges Severens and Taft was held by the Supreme Court of the United States to be without basis or authority.

Complainant says in its brief (p. 33) that Mr. D. M. Goodwyn, General Freight Agent of the Louisville & Nashville Railroad Company who was the only witness other than Mr. C. E. Fulton who testified for defendants, is an entertaining talker who can say much and adroitly evade the issue. Let us see how the testimony introduced by defendants compares with that introduced by complainant as to pertinency to the facts in controversy.

599 General Relative Situation as to Competition and Transportation Facilities at Bowling Green, Ky., Nashville, and Clarksville, Tenn., Louisville, Ky., and Evansville, Ind.

Mr. Goodwyn, after having shown (Tr., pp. 328-333) his eminent qualification to testify as to the facts in issue, filed as Exhibit No. 1, in connection with his testimony (Tr., p. 334) a blue print, which shows the location of Bowling Green, Nashville, Clarksville, Louisville and Evansville, with particular reference to the situation south of the Ohio and east of the Mississippi River. This blue print shows (Tr., pp. 335-336) New Orleans because of that portion of the complaint relating to the sugar rate; Jacksonville, Fla., because of that portion of the complaint relating to the orange rates from Jacksonville, and in red ink the Mississippi River north of Memphis, the Cumberland River, the Green and Barren rivers, and the Ohio River from Cincinnati to its confluence with the Mississippi at Cairo. No attempt has been made in this map to show the available routes by which traffic moves from the east to Nashville, to Clarksville, and Bowling Green, or from the east to any of the different Ohio River crossings, because a map to have exhibited information of that sort would have been so intricate as practically to destroy its value as an exhibit. With reference to this point Mr. Goodwyn said (Tr., pp. 335-336):

"I presume the Examiner and these other gentlemen are in a general way perfectly familiar with the multiplicity of routes in that territory. I might say right there, I had occasion a year or two ago

to make some investigation as to the number of available routes, using a different factor that was entirely practicable, though parts of the lines were alike, from New York to, I think it was New Orleans—no, not to New Orleans, but to Louisville. They were counted up, and the available routes from New York to Louisville *was* something in excess of thirteen hundred. I merely mention that to show why I have not undertaken to describe for a minute all those various roads. I have not attempted to show the connections at Cincinnati, Louisville, Evansville, and Cairo to and from Chicago. I have shown the principal routes from Jacksonville and I have shown the principal routes from Savannah to the Ohio River because I would have occasion to refer to that Savannah feature a little later on during my testimony."

The map also shows Jackson, Montgomery, and Atlanta, which are referred to in the complaint, but (Tr., pp. 336-337) it does not show all of the routes available from the Ohio River to those points. There are connections with the Tennessee Central, which extends easterly from Nashville, which are not shown on the map (Tr., p. 337). The heavy white lines on the map represent the lines of the Louisville & Nashville Railroad Company (Tr., p. 338)

With reference to Paragraph XVIII of the complaint, in which it is alleged that the circumstances and conditions surrounding the transportation of traffic to and from the station of Bowling Green, Ky., are substantially similar to the circumstances and con-
600 ditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tenn., Louisville, Ky., and Evansville, Ind., Mr. Goodwyn said (Tr., p. 379):

"I have undertaken to explain the circumstances and conditions surrounding the transportation of traffic to and from these different points, testifying to them under oath, as I see the situation and as I believe it actually exists, as I know it exists, and certainly it can not correctly be said that the circumstances and conditions surrounding the transportation of traffic to and from Bowling Green, Ky., are the same or substantially the same as the circumstances and conditions surrounding the transportation of traffic to and from Nashville, Clarksville, Evansville and Louisville."

The distance from Clarksville to the Ohio River by water is about two thirds the distance from Bowling Green to the Ohio River by water (M. H. Crump, Tr., pp. 211-212).

Bowling Green Compared with Nashville and with Clarksville.

General Comparison.

Complainant asserts the absence of rate compelling competition by rail at Nashville and at Clarksville, and quotes certain statements made in the case of East Tennessee, Virginia & Georgia R'y Co. v. Interstate Commerce Commission by Judge Severens, 85 Fed. 116, and by Judge Taft, 99 Fed. 63 (complainant's brief, pp. 20-23 and 37-41). With reference to these statements of facts, upon which complainant places its entire reliance in this regard, we quote from

the opinion of the Supreme Court of the United States in the same case (181 U. S. 24-27) as follows:

"Again the assertion that the road from Chattanooga to Nashville growing out of the stock ownership was in legal effect the Louisville and Nashville Railroad, is necessarily antagonistic to the express finding of the commission, that the carriers through Chattanooga to Nashville were placed in a position where they must either meet the competition at Nashville or abandon all traffic to that point. * * *

"The court, moreover, thought that the Louisville & Nashville Railroad, which owned the line from Cincinnati to Nashville, was in no position, as the owner of a majority of the stock in the road from Chattanooga to Nashville, to avail of the competition at Nashville as a basis for charging the lesser rate for the longer haul through Chattanooga to Nashville. It was besides concluded that where a rate to a particular point was the product of agreement, which stifled competition, such rate could not become the basis upon which to predicate the right of a carrier to charge a lesser sum for the carriage of freight passing through that point to a more distant place, because of the competition at such more distant place. * * *

"Without taking at all into view the legal propositions announced by the Circuit Court of Appeals in its opinion, and conceding, without passing upon such questions, that they were all correctly
601 decided, it is plain that all the premises of fact upon which the propositions of law decided by the Circuit Court of Appeals rest are at variance with the propositions of fact found by the Commission, in so far as that body passed upon the facts. * * *

"To state these issues is at once to demonstrate that their decision, as a matter of first impression, properly belonged to the Commission, since upon that body the law has specially imposed the duty of considering them."

And we quote as follows from the syllabus of that case as decided in the Supreme Court of the United States (181, U. S. 2):

"It is plain that all the premises of fact upon which the propositions of law decided by the Circuit Court of Appeals rest, are at variance with the propositions of fact found by the Commission, in so far as that body passed upon the facts, and this court accordingly reversed the decree of that court, and ordered the case remanded to the Circuit Court with instructions to set aside its decree adjudging that the order of the Commission be enforced, and to dismiss the application made for that purpose with costs, the whole to be without prejudice to the right of the Commission to proceed upon the evidence already introduced before it, or upon such further pleadings and evidence as it may allow to be made or introduced and to hear and determine the controversy according to law."

The citation of this case is fatal to the complainant's contention as to the absence of rate compelling competition by rail at Nashville. This Commission held that competition did in fact exist, and the opinion of the Supreme Court of the United States shows that any finding of fact to the contrary is invalid. The question really determined by the case was, of course, that competition with other

carriers subject to the Act to Regulate Commerce was a justification for discrimination and for violation of the letter of the Fourth Section of the Act.

The fact put forward by complainant that the rates to Nashville and to Clarksville are the same now that they were before the building and completion of that road is proof that there existed at those points, prior to the building of the Tennessee Central, the competition which the carriers have always contended did exist at those points.

We agree fully with the finding made by the Commission and emphasized by complainant by quotation in its brief (p. 25), that "Nashville had lower rates from the east than Chattanooga before the railroads were constructed between Cincinnati and Nashville, and between Chattanooga and Nashville," but the deduction drawn by complainant on page 26 of its brief—that the Commission regarded the rates to Nashville not only as produced by Cumberland River competition, but as a result of the interest of the L. & N. Railroad in maintaining the commercial supremacy of Nashville—is not complete. The Commission found that there was active and compelling competition by rail at Nashville, and it is a fact that such active and compelling competition by rail does now exist.

There is, of course, the added factor now both at Nashville
602 and at Clarksville of competition with the Tennessee Central Railroad, but as the competition before the advent of the Tennessee Central Railroad was real and substantial, the building of the Tennessee Central has not materially affected the rates.

The statements in complainant's brief (pp. 26-27) as to natural advantages of Bowling Green in the matter of river transportation are not borne out by the history of transportation on the Green and Barren rivers which complainant has been at such pains to put into the record and to emphasize in its brief. The indisputable facts are that Nashville and Clarksville, as a result of their geographical location, were important distributing points before the railroads were built, and that the transportation afforded by the Green and Barren rivers has at no time been sufficient or substantial enough to affect the rates at Bowling Green as river transportation has affected the rates at Nashville and at Clarksville. There may be many reasons for these facts: it may be that the prominence of Nashville and of Clarksville was due to their location nearer the markets of consumption in the southeast which they served before the advent of the railroads; it may be that the industry and progressiveness of the citizens of Nashville and Clarksville were superior to the industry and progressiveness of the citizens of Bowling Green in building up the trade of their respective towns. But whatever the reasons may have been, the fact remains that the railroads, when they reached Nashville and Clarksville, simply met the conditions which they found, and those conditions have never existed and have never had to be met to as great an extent at Bowling Green. To the extent to which such conditions have existed, they have been fully met by the railroads, as was testified to by Mr. Goodwyn. Complainant admits (brief, p. 28) that the conditions

at Nashville and at Bowling Green are different, and attempts to excuse those differences by saying that Nashville had the benefit of its river at a much earlier date than Bowling Green was able to secure the benefit of its river. It is apparent that complainant's claim of similarity of the circumstances and conditions which exist at Bowling Green to the circumstances and conditions which exist at Clarksville and at Nashville is based entirely upon the fact that Bowling Green is situated upon or near a navigable stream. But, as was shown in the testimony of Mr. Sumpter, heretofore referred to, Livermore, Ky., and Rockport, Ky., are also points located upon the Green River, and on the Evansville & Bowling Green Packet Line, and between Bowling Green and Evansville; and if the mere location upon a navigable stream were sufficient to destroy all other differences and to create similarity of circumstances and conditions, then Rockport and Livermore, Ky., which attorney for complainant referred to as insignificant points, would be equally as entitled to Louisville, Evansville, Nashville, or Clarksville rates as would be Bowling Green. It is, of course, patent that, regardless of the fact that Bowling Green is located on a navigable stream (upon which complainant relies exclusively), there are many differences of circumstances and conditions which justify a discrimination in rates between Bowling Green on the one hand, and Nashville and
603 Clarksville on the other. To accept the contention of complainant would be to assert that mere location on a navigable stream entitles any point to the lowest rates which may apply to any other point situated on the same or neighboring navigable waters, regardless of any other differences in circumstances and conditions in transportation and competition which may exist at those other points. If the traffic and importance of Bowling Green are not now, or have not in the past been, sufficient to justify the maintaining of competing lines of boats on the Green and Barren rivers, while the traffic and importance of Nashville and Clarksville either now justify or have in the past justified such competition, it is clear that in one case the effect of the river on transportation rates would be actual and controlling, while in the other case there would be no effect at all. A canal built through the Desert of Sahara to an oasis of one thousand inhabitants would probably not develop enough traffic to justify the running of a line of boats or barges on that canal. If, in such case, a railroad also reached the oasis, it could not be contended that the mere location of that oasis upon navigable water necessitated or justified competitive rates on the part of the railroad. The contention of complainant that the circumstances and conditions at Bowling Green are substantially similar to those at Nashville and at Clarksville is, in view of the known facts as to the actual and compelling nature of the competition at Nashville and Clarksville, and the insignificance of the competition at Bowling Green, simply ridiculous. If the crutch afforded by the expenditure of two million dollars of Government funds on the Green and Barren rivers has not been sufficient to enable the lame duck, Bowling Green, to keep pace with its livelier neighbor, Nashville, the mere fact of location on navigable water does not create such similarity

of conditions as will justify complainant in demanding that defendants meet the water competition which complainant claims, but defendants do not believe to exist. Defendants certainly have the right to determine this matter for themselves.

The testimony of Mr. H. D. Graham, who is Secretary of complaint, Bowling Green Business Men's Protective Association (Tr., p. 244), illustrates in part the effect of market competition on the Nashville rates, which is entirely beyond the control of defendant carriers. It will hardly be contended by complainant that the low rate on cove oysters from Charleston, S. C., to Nashville, Tenn., is of defendants' making, and yet it is shown by its own witness that as a result of the intense competition of the markets of Baltimore and Charleston and of the railroads serving those markets "Nashville is recognized as one of the lowest markets on the Bullhead oysters in the United States."

As was testified by Mr. Fulton (Tr., p. 310), the competition at Nashville and Clarksville is "north, south, east, and west, crisscross, and every way you can make it."

The location and circumstances and conditions as to transportation of Bowling Green, Ky., and Nashville and Clarksville, Tenn., are described generally by Mr. Goodwyn as follows (Tr., pp. 338-342):

Bowling Green is the county seat of Warren County, Ky.
604 It is located on the main line of the Louisville & Nashville Railroad, 114 miles south of Louisville and 73 miles north of Nashville. The Memphis Line of the Louisville & Nashville Railroad begins at Memphis Junction, 4 miles south of Bowling Green, extending in a southwesterly direction to Memphis, Tenn., passing through Clarksville, Tenn., en route, that point being 64 miles from Bowling Green and 199 miles from Memphis. Bowling Green is situated at the head of navigation on Barren River, which empties into the Green River at Woodbury, the Green, in turn, emptying into the Ohio at a point near Evansville. The distance by river from Bowling Green to Evansville is about 190 miles. The population of Bowling Green, according to the census of 1910, was 9,173.

Nashville is also located on the main line of the Louisville & Nashville Railroad. It is 187 miles south of Louisville, 122 miles north of Decatur, Ala., and 622 miles north of New Orleans, the southern terminus of the road. It is also located on the Nashville, Chattanooga & St. Louis Railway, 151 miles from Chattanooga, a point on the Tennessee River, 168 miles from Hickman, Ky., a point on the Mississippi River, and 239 miles via the N. C. & St. L. from Memphis, on the Mississippi River. Nashville is also located on the Tennessee Central Railroad 163 miles from Emory Gap, where the Tennessee Central connects with the Cincinnati, New Orleans & Texas Pacific Railroad, 166 miles from Harriman, where connection is made with the Southern Railway, 56 miles from Clarksville, Tenn., where the Tennessee Central crosses the Louisville & Nashville Railroad, and 85 miles from Hopkinsville, Ky., where it connects with the Illinois Central Railroad, and also connects again with the L. & N. Nashville is located on the Cumber-

land River about 200 miles from Paducah, and approximately the same distance from the head of the navigable waters on the Cumberland River in the vicinity of Burnside, Ky. According to the 1910 census, the population of Nashville, Tenn., was 110,364.

Clarksville, Tenn., is located on the Memphis Line of the Louisville & Nashville Railroad, 199 miles from Memphis, 63 miles from Nashville via the L. & N., 124 miles from Evansville. It is also located on the Tennessee Central Railroad, 56 miles from Nashville by that line, and 29 miles from Hopkinsville, Ky., where the Tennessee Central connects with the Illinois Central Railroad. Clarksville is also located on the Cumberland River approximately 150 miles from where it empties into the Ohio River, near Paducah, and probably 60 miles from Nashville by river. According to the United States census of 1910, Clarksville had a population of 8,548.

There is both river and rail competition at Nashville and Clarksville, while there is river competition only at Bowling Green.

The following table shows the growth in population of Bowling Green, Nashville, and Clarksville, respectively, according to the United States census reports from 1850 (Tr., pp. 380, 381, 383, 384):

605

	Bowling Green.	Nashville.	Clarksville.
1850	Not shown	10,165	Not shown
1860	Not shown	16,988	Not shown
1870	4,574	25,865	3,200
1880	5,114	43,350	3,880
1890	7,803	76,168	7,924
1900	8,428	84,703	10,377
1910	9,173	110,364	8,548

The tonnage and revenue for freight received at and forwarded from Bowling Green, Nashville and Clarksville, respectively, for the seven years July 1, 1904, to June 30, 1911, inclusive, were shown by Mr. Goodwyn (Tr., pp. 381, 382, 384) as follows:

Freight Received.

Census.	At Bowling Green.	At Nashville.	At Clarksville.
Pounds	829,255,199	8,211,098,002	2,794,846,397
Revenue	$919,180.78	$7,444,865.89	$1,788,250.76

Freight Forwarded.

	From Bowling Green.	From Nashville.	From Clarksville.
Pounds	442,364,900	7,531,101,500	1,190,307,800
Revenue	$575,105.66	$5,848,016.97	$1,542,862.94

Mr. Goodwyn testified (Tr., pp. 382-385) that the differences in the commercial importance of Bowling Green, Nashville and Clarks-

ville were not due to any arbitrary adjustment of rates by the railroads, but were due to geographical and other natural advantages, independent of any action which may be taken or may hereafter be taken by the railroads; that he would venture the assertion that before there was a railroad either at Nashville or at Bowling Green, the relative commercial importance of the two cities showed as great a balance in favor of Nashville as it does to-day; that from his knowledge of the business that was handled at Nashville, and the reports that have been made of its geographic position, and the operation of the Cumberland River boats, and the handling of through traffic, and the concentration at Nashville of cotton grown in the south, and its movement therefrom, he has no doubt that his assertion in this regard is true; that the Louisville & Nashville Railroad has made no arbitrary adjustment of rates for Clarksville so far as its traffic officers have any knowledge of the situation or any building gauge to apply; they have met at Clarksville what they found there, and they have created no conditions; that Clarksville is believed to be the largest dark tobacco market in the world.

With specific reference to the rates on poultry and eggs, Mr. Goodwyn testified (Tr., p. 419) that the adjustment of rates from Nashville is one which the L. & N. Railroad could not control, except to the extent of advancing its individual rates and getting out of the business; that whatever the competitive conditions were, and especially the water competitive conditions, competition by water does not actually or potentially exist as to certain commodities, and does not necessitate the continuance of any such rates as those in effect on eggs and dressed poultry from Nashville; that he would be very glad to advance the rates on eggs and dressed poultry from Nashville to the east to the basis of actual combination, if he could do so and haul any of the business. Mr. Goodwyn said (Tr., p. 420) that the tobacco rates were established from Nashville by his competitors and over his protest; and (Tr. pp. 424-425) the Louisville & Nashville Railroad does not want to handle double-deck hogs at all; that the company believes it is a dangerous thing to handle them that way, and that in his opinion that belief is sufficiently exemplified in practice; the L. & N. Railroad has not built a double-deck car for service on its lines and has not in its ownership a single double-deck car; it handles no double-deck cars of hogs at all, except from points at which it is compelled to handle them; the Nashville, Chattanooga & St. Louis Railway, however, looks at the matter in a different aspect and does handle double-deck cars on its line at competitive points, as well as local, the result being that at Nashville the Nashville, Chattanooga & St. Louis Railway take double-decks, and the Louisville & Nashville Railroad necessarily has to handle double-deck cars from Nashville accordingly. It can not be denied that the record shows specially, as well as generally, active and compelling competition on the part of the Nashville, Chattanooga & St. Louis Railroad, and other railroads at Nashville, with the Louisville & Nashville Railroad. And Mr. Goodwyn said (Tr., p. 442):

606

"From my personal experience with the Louisville & Nashville

Railroad, we have no stronger competitor, if any as strong, as the Nashville & Chattanooga Railway."

The Competitive Effect of the Green and Barren Rivers at Bowling Green, Ky., Compared with the Competitive Effect of the Cumberland River at Nashville and Clarksville, Tenn.

We quote from statement made by Mr. E. B. Stahlman before this Commission on May 27, 1887, In the Matter of the Application of the Louisville & Nashville Railroad Company, and Members of the Southern Railway and Steamship Association, for Relief from the operations of the Fourth Section of the Act to Regulate Commerce:

"Nashville, Tenn.

"This city is located on the Cumberland River, a stream which is navigable for nine months in the year with steamers of four to eight hundred tons capacity, plying between Nashville, Evansville, Cairo, and connecting at the latter point with the Ohio and Mississippi River steamers, also with the rail lines centering at Cairo and Evansville. She also has a line of boats on the Upper Cumberland
607 River, connecting at Port Burnside with the Cincinnati, New Orleans & Texas Pacific Railroad.

"The city of Nashville was a commercial distributing center for a large territory, and furnished a market for the produce of that territory for many years before any railroads were constructed. * * *

"The first railroad built was the Nashville & Chattanooga, extending from Chattanooga to Nashville, completed in 1854. The second, the Louisville & Nashville, extending from Louisville to Nashville, completed in 1859.

"The third, the Nashville & Northwestern, extending from Hickman, Ky., on the Mississippi River to Nashville, completed in 1869.

"The fourth, the Tennessee & Pacific, extending from Labanon, Tenn., to Nashville, completed in 1870.

"The fifth, the Edgefield & Kentucky, now known as the Henderson Division of the Louisville & Nashville system, extending from Evansville, Ind., to Nashville, completed in 1872.

"As unreasonable as it may seem, there are persons residing in Nashville to-day who claim that the city would have fared better if no railroads had ever been built; and that Nashville was more prosperous before she had any railroads than she is now. I do not, of course, concur in this view of the case, but I am free to say, located as the city is on a navigable stream, that she enjoyed advantages relatively as great before railroads were constructed as she has enjoyed since, and that local and intermediate points through the State of Tennessee reached by the different railroads of the State have been more benefited relatively by railroad construction than the city of Nashville. * * *

"Clarksville, Tenn.

"This city is located on the Cumberland River, and has the advantage of two lines of steamers plying between Clarksville and Cairo and Evansville, connecting at those points with Ohio and Mississippi River steamboats as well as rail lines centering at Cairo and Evansville. For many years Clarksville has been a commercial and distributing center. The city ranks as the second largest leaf-tobacco market in the United States. There are a number of jobbing houses in the city representing various branches of trade.

"* * * The Cumberland River, navigable the year round up to Clarksville, is the factor in the adjustment of rates to and from that city. The testimony of T. G. Ryman, F. P. Gracey and M. H. Clark, abundantly shows that the Cumberland River fixes the rates to and from Clarksville.

"The people of that city had excellent transportation facilities before any railroads were built. The rates of transportation to and from Clarksville by rail can not be advanced without transferring the city's large business to the river lines. Nature has done much for the city, which Congress has materially aided by appropriations aggregating $803,000 for the improvement of the Cumberland River.

The rail lines have not made Clarksville a commercial center;
608 they accepted the situation as they found it, which they could not have ignored if they would. * * *"

The Cumberland River.

Mr. D. M. Goodwyn's testimony (Tr., pp. 343-359) shows that:

The Cumberland River is a navigable stream for boats of considerable size for the greater part of the year, and for tows pretty much all the time. Prior to the construction of any railroad at Nashville, through boats were operated between Nashville and the Ohio River to St. Louis, New Orleans, Louisville, Cincinnati, and in some instances Pittsburg. These boats, of course, passed Clarksville en route to and from Nashville. These boats handled western produce, grain, flour, hay, merchandise, and likewise cotton products in the south. Nashville was a recognized concentrating, reshipping, and jobbing market of great importance in those days. Its population in 1850 was 10,165. It was to serve this extremely important concentrating and distributing interest that the Nashville & Chattanooga Railroad was built. The building of the Nashville & Chattanooga Railroad was projected directly for the purpose of connecting the west with the south. The design was to supply the missing link between Chattanooga and the Ohio River by constructing a line of railway to the head waters of the Cumberland River, at which point connection could be had by packets plying on said river and on the Ohio and Mississippi rivers with the railways already in operation between Chicago, the Lakes, and Cincinnati, Louisville, Evansville, and Cairo; and it was intended to provide this short route to the west and to secure a western outlet for the lines of railway previously built from Charleston, Wilmington, and Savannah, via Atlanta, to Chattanooga.

The construction of the Nashville, Chattanooga & St. Louis Railway was largely aided by stock subscriptions made by the cities of Charleston, Columbia, and Augusta. Extracts from a letter written from Nashville on December 12, 1846, by Mr. V. K. Stevenson, who, on January 25, 1848, was elected the first President of the Nashville & Chattanooga Railroad, to the Hon. John C. Calhoun, show that there were produced and shipped from the immediate vicinity of the contemplated railroad 500,000 sacks of corn, mostly from Nashville, and all from the Cumberland River, two and one-half bushels to the sack; that there was one fact with regard to the commerce of the country that would operate to give at an important season a very heavy trade to this railroad, and that was that upon the breaking up of all the northern waters a vast amount of corn, pork, flour, and wheat was poured into New Orleans. A good steamer would reach Nashville from St. Louis in 40 hours, when she would be 5 or 6 days to New Orleans. The Cumberland River was quite the equal of the Ohio below Louisville, and was navigable usually eight months in the year for fine boats, and for the balance for smaller steamboats.

The Cumberland River was the admitted, and then about the only, connecting link, or the best connecting link or highway between the middle west, the west, and the northwest, on the one hand, and
609 the south and southeast, on the other. Mr. Goodwyn had seen photographs taken of the wharf front at Nashville many years ago, which showed a large number of boats tiered two and three tied up there either discharging or receiving freight. The United States Government has expended, or will in a comparatively short time complete the expenditure of, about $1,590,000.00 in removing obstructions in the river and in improving its operating devices. On account of the construction of railroads to and from Nashville and between Nashville and points beyond there are, of course, not so many boats now in the river as there formerly were. Some of the reasons for this result are the superior character of transportation, the greater convenience in the matter of loading, the growth of warehouse and store construction along the lines of railroad, both at shipping points and terminal points, which make railroad transportation as a general rule very materially better than and preferable to water transportation, and enable the railroads to secure higher rates of freight for their service than their river or water competitors are able to obtain. Although there are fewer river steamboats on the river now than formerly, the Cumberland River Steamboat Company has about five or six boats in operation on the lower Cumberland. It maintains a weekly service between Nashville and Paducah, sometimes a service twice a week, and a weekly service between Nashville and Evansville, of course during the periods of navigation. There are several tow boat lines in the Cumberland River handling cross-ties out, and handling in anything that they can get, and at any rate that a shipper is willing to pay for that character of transportation. It is frequently very nominal. Mr. Goodwyn has known grain to be hauled from the Ohio River to Nashville for 4 cents a hundred pounds. These various river craft handle considerable grain. They handled a couple of years ago from

eight hundred thousand to a million bushels. The lines have available barges of a capacity of ten thousand to fifteen thousand sacks of grain, respectively, or about thirty-five thousand bushels of grain in one tow. While water transportation is not used to so great an extent as formerly, the river, and the facilities that it offers, still exists, and the steamboat competition, therefore, may be said now to be largely potential. But, "it is certainly amply strong enough to prevent any material rate changes, independent of other conditions prevailing for many years and at this time at Nashville." What is true at Nashville, so far as the river is concerned, is likewise true of Clarksville.

When the L. & N. Railroad was first completed between Louisville and Nashville, in 1859, its first line of rates between Louisville and Nashville was established on a scale beginning at 70 cents first class. In those days the freight rates of the Louisville & Nashville Railroad were made by the Board of Directors. The Superintendent of the road filed a petition with the Board of Directors concerning the Nashville rates, and said that the rates would not handle any business, and asked that he be granted authority to reduce the rates and put them in line with the competition which actually existed at that point.

610 In this connection Mr. Goodwyn said (Tr., p. 349):

"That is the first instance that I know of in the history of the Louisville & Nashville Railroad where there was ever an attempt to meet water competition, and is certainly, so far as my knowledge extends, the very first instance on the line of the L. & N. where the much-discussed long and short haul principle was departed from. I would like to add to that, that the Cumberland River, navigable for the greater part of the time to the Ohio, and for a considerable period of the year for two hundred or more miles above Nashville, was the reason which determined the location of Nashville, and that was determined long prior to the construction and operation of any of the steam railroads, and when Nashville was recognized as an important trading center."

Continuing (Tr., pp. 350, et seq.):

For many years prior to the Civil War regular lines of steamboats were operated between Nashville and the principal cities on the Ohio and Mississippi Rivers between New Orleans and Nashville. There was double weekly service afforded by the steamboats Joe Johnson, Red Rover, Scotland, and Talleyrand, between Paducah, Ky., and Nashville; and double weekly service was maintained by the steamboats Minnetonka and James Fisher between Nashville and Cincinnati; weekly service between Nashville and Pittsburg via Cincinnati, Louisville, and Evansville, and between Nashville and St. Louis, weekly service. With these lines of steamers, through routes were offered and through rates were made between Nashville and Chattanooga, between the west and the south, and in connection therewith, and upon them the Nashville & Chattanooga Railroad solely depended for its through business, this comprising an important part of its traffic.

This importance is evidenced by the following extract from the

Twelfth Annual Report of the Nashville & Chattanooga Railroad, dated December 13, 1859, which was read by Mr. Goodwyn:

"Much of the provisions and produce from Cincinnati and St. Louis going to the States south of us was diverted from our road; from the former place by the ruinous competition in low freights offered by the B. & O.; from St. Louis by the Tennessee River and Memphis boats taking freight at much lower figures than the Nashville boats charged."

In connection with the importance of the Cumberland River and its influence upon the situation at Nashville, originally and now, Mr. Goodwyn also read an affidavit, or a portion of an affidavit, made in the Duncan case by Mr. G. W. Ashcraft, as follows (Tr., pp. 351-354):

"I am seventy-five years of age. I have been on the river since I was 16 years of age, running between Louisville and Henderson for a considerable part of the time. In 1856, I ran as clerk on a boat from Louisville to New Orleans. About 1858, I commenced clerking in the Louisville and Henderson trade, in which I remained three or four years. In 1863 and 1864, I was master of the steamer Mercury in the Government employ running between Louisville and Nashville, and in the Tennessee River also. The Mercury was chartered by the Government for purposes of war. The
611 traffic carried by the Mercury for the Government consisted of commissary stores, corn, hay, and grain. The grain was obtained on the Ohio River and some of it carried to Nashville, and some of it carried by the Tennessee River to Eastport. During this same time there were hundreds of other boats handling grain from Ohio River points to Nashville, and also by the Tennessee River. Nearly all the grain came from the Ohio River and Wabash River points. To give you an idea of the number of steamers bringing freight to Nashville, off the Ohio River, the closest landing that I could at times make was at the old race track, which was two miles from the upper wharf; there were two wharves at Nashville—the upper and lower wharf. I have seen at a given time as many as four or five steamboats lying abreast at the wharf unloading, and other boats four or five deep awaiting their turn to be unloaded at the wharf. I have seen this condition at both of the wharves at Nashville. In January, 1871, I took charge of the coal mines at Dekoven, Kentucky, a point located on the Ohio River about sixty miles above the mouth of the Cumberland River. It was the custom of boats plying on the Ohio River and the Cumberland River to stop there for coal, and in that way I became familiar with the general character of their territory and their points of destination. I was manager of the coal mine for five years, and during that time the Cumberland River boats and the Tennessee River boats went up the Ohio River and the Wabash River for grain which they brought back by the mines where they coaled, and they were loaded down with this grain, and a majority of them destined to Nashville, some of them went to Johnsonville, Tennessee, where they had the same river rate. * * * When I first quit the upper Cumberland I was in the employ of Captain Ryman, and he put me on the

Silver Thorn, one of the boats running from Nashville to Evansville, Indiana. During the season of 1878 and 1879, I remained on the Silver Thorn; during the season of 1880 and 1881, I was on the B. H. Cook, running from Nashville to Evansville. During this period we handled a great deal of grain from Ohio River points to Nashville, which constituted practically three-fourths of the cargo. The Silver Thorn and the B. H. Cook made one trip a week each between Evansville and Nashville. The Nashville & Cairo Packet Company and the Nashville & Evansville Packet Company were then operated under one management. There were two boats running between Nashville and Cairo, and one in the Nashville and Evansville trade, and each of them made one trip a week. The two boats had a capacity of about four hundred tons each. It was the custom of boats running from Nashville to Cairo or Evansville that didn't have a full cargo at Cairo, to go as high as Shawneetown, Illinois, and other upper points, and get loads of grain for Nashville. This was frequently the case."

Continuing, Mr. Goodwyn's testimony shows that (Tr., p. 345):

As late as the early '70's the railroad situation in the south was such that the competition of the railroads for business was not felt by the steamboat interests, and until that time Nashville,
612 Louisville, and other river points, were dependent upon the river transportation.

(Tr., pp. 354-355). The business interests, warehouses, and stores at Clarksville, Tenn., were located to a large extent on or near the river bank. The L. & N. Railroad, when it acquired the line which now constitutes its Memphis Division, found that condition existing at Clarksville. It did not create anything of the sort, it found it there. It simply met the condition that it found; it did not create anything at Clarksville in the way of rate adjustment. It undertook to meet what it found there, and to provide, through its service, for meeting the competition in the Cumberland River at Clarksville.

(Tr., pp. 355-359.) The Annual Report of the President and Directors of the L. & N. R. R. Co., for the fiscal year ending June 30, 1868, contains a report of Mr. Albert Fink, General Superintendent, in which the following appears:

"Up to the close of the war our road was operated exclusively as a local one. Since then, and particularly within the past year, we have greatly enlarged our field of operation by means of our extensions and Memphis connections. The various railroad systems with which we have come in contact have multiplied our sources of revenue and have opened up to us sections of country hitherto beyond our reach. Formerly a mere local road doing business between Louisville and Nashville, we are now competing with the various other transportation companies for the through traffic of the entire south. But this changed condition of our road, not generally understood, has an important bearing on the policy of the company. It may not be out of place in connection with the consideration of last year's through traffic from this road, to review the principal sources whence our business is now obtained, together with the routes

which at the different centers of the trade come into competition with us."

Then follows the list of the competitive points referred to by Mr. Fink. He starts with Memphis and states the competitive character of the business at and via that point. He then mentions as the competitive conditions at Clarksville, Tenn., first the Cumberland and Ohio Rivers to Cairo, Evansville, Louisville, and Cincinnati, and from all these points by rail north and east as above—the above referring to the north and east description in connection with Memphis. He then follows with Danville, Tenn., which is the point where the Memphis Line crosses the Tennessee River. He then follows with Nashville, and shows the following competitive conditions. First, Cumberland River to all points as from Clarksville, Second, Nashville and Northwestern Railroad to Hickman and Mississippi River to St. Louis. Third, Nashville and Northwestern Railroad to Hickman, river to Cairo, Evansville, Louisville, and Cincinnati. Fourth, Nashville & Chattanooga Railroad, thence east via the Air Line to Washington and Norfolk. Fifth, Nashville & Chattanooga, Raleigh, Charleston, or Savannah, thence to the sea north. He makes no mention whatever of competition at Bowling Green, Ky. The Mr. Albert Fink referred to, and who was at that time Superintendent of the Louisville & Nashville Railroad Company,
613 was subsequently higher in the service of that Company, and when he left the road and went east became Commissioner of the Trunk Lines, and in wholly, or at least largely, responsible for the adjustment of freight rates that prevails to this day in that territory of the United States which has the largest tonnage and revenue of any in the country. Mr. Fink's report referred to actual competition. At that time, of course, the Tennessee Central was not running through Clarksville, and the competition at Clarksville referred to was that on the Cumberland River.

The Green and Barren Rivers.

Mr. Goodwyn's testimony with reference to navigation on the Green and Barren Rivers as affecting the situation at Bowling Green will be found in pages 371 to 378, inclusive, of the record. From that testimony it appears:

That the first United States census report that contains any record of Bowling Green is that of 1870, in which the population of Bowling Green was placed at 4,574. Boats have been running on the Green and Barren rivers for many years, and no doubt the period has been as stated by the gentlemen who had testified before in the case (witnesses for complainant). Unquestionably they were operated long prior to the construction of the L. & N. Railroad. The distance by water from Bowling Green to Evansville is 190 miles; it is all slack water navigation to the mouth of the Green River, about 8½ miles above Evansville. There are five locks in the two rivers, four on the Green and one in the Barren. The Green River connects with the Barren at Woodbury. The capacity of any through boat operating in any river with locks is necessarily limited by the size of the locks, and consequently the

boats operating in the Green and Barren rivers are smaller than the boats operated in the Cumberland River. Mr. Goodwyn had made some investigation as to that particular point, and had found that no boat can operate through to Bowling Green whose maximum length exceeds 147 feet. The wheel of the boat takes up about 20 feet, and the hull measurement would be about 127 feet. There are two boats now operated to and from Bowling Green; they are the Bowling Green, 122 feet long and 123 net tons register, and the Evansville, 120 feet long with 144 tons net register. But both boats can actually carry something over 200 tons. The normal scale of the boat rates between Evansville and Bowling Green has never been as low as the normal scale carried by the boats in the Cumberland River to and from Nashville. While Mr. Goodwyn was unable to say definitely what was the occasion of that difference, from his own personal knowledge and experience, he was of the opinion that it was occasioned partly by the volume of tonnage, which is much greater in the Cumberland than in the Green and Barren rivers, and which in the Cumberland River was in former years very much greater than it is now, and also by the size of the boats and cost of poration. The United States Government regulations require that a boat of from 100 to 450 tons capacity shall carry the
614 same crew, and the only difference in the cost of operation would be probably in the interest on the price of the boat itself, which would be less for the smaller boat than for the larger, and in the cost of fuel. A 300-ton boat does not cost twice as much as a 150-ton boat; it costs about 25 per cent, or 30 per cent, more.

Mr. Goodwyn said (Tr., pp. 374-377):

"As to boat rates, there have, of course, been wars on the Green and Barren rivers, just as there have been rate wars on every river in the United States that was ever fretted by the wheel of a steamboat. That seems to be a little diversion that the steamboat people engage in every once in a while for some reason that I do not altogether understand. Rate wars are unproductive of any good either to the transportation facilities that engage in them, or any material good to the people that avail themselves of the cut rates, during the existence of the wars. There seems to be an idea, though, on some rivers, that there should be an exemplification of the law of the survival of the fittest, or the fellow that has the longest bank roll. Some reference, a good deal of reference in fact, has been made to the Steamer Sun that was operated in the interest of the people of Bowling Green for a period of nine months of the year ending in 1901. Of course, I have no knowledge other than that which has been given to me in a general way and in the testimony which I have heard here, about the ownership of the Sun. I take it that the Sun was bought by the people of Bowling Green in the belief that their river rates were not sufficiently low, and for the same purpose that the people of Chattanooga have operated a boat on the river at that point, namely: not so much to have the pleasure of patronizing the boat, as to force down the rail rates and get reduction in that direction. At any rate, when the Sun came into the business, I believe it is a fact that the rates to and from

Bowling Green became generally demoralized, utterly demoralized, both on the river and to a very considerable extent, by rail. I heard some testimony in regard to the reduced rates that were made into Bowling Green from Evansville, if I remember, and from Nashville. I was with the L. & N. Railroad, of course, at that time, and I would like to say that I have no personal knowledge whatever of any reductions that were made by the L. & N. Railroad at that time in interstate rates, and while I have not any disposition at all to deny the general facts as testified to by Mr. Greer and Mr. Smith, was it not?—I am inclined to think that there must be some mistake, if it resulted in any change in the interstate rates. The L. & N. did authorize reduced rates between Louisville and Bowling Green; it did not issue them, it simply protected them under arrangements that were made through its representatives with the people of Bowling Green. * * *

"To my knowledge, the L. & N. Railroad made no reductions whatever in any interstate rate, though it did make contract, subject to revocation, I notice, as to freight rates between Bowling Green and Louisville. When the Sun went out of business in 1901, it is my understanding that an agreement was made between the Evansville and Bowling Green Packet Company on the one
615 hand, and Mr. Wilkerson, representing the Packet Company, and the citizens of Bowling Green, or at least those interested in the Steamer Sun, one the other hand, represented by Mr. Greer, under the terms of which the Packet Company obligated itself to maintain for a period of five years the rates between Evansville and Bowling Green, which were approximately, and very largely, I understand, the same as those rates which had been voluntarily established by the Steamer Sun when she began operating in the river in competition with the Evansville & Bowling Green Packet Company, and which rates were lower than the boat rates previously carried by the Evansville & Bowling Green Packet Company. The contract, or agreement, or whatever it may have been called, would have expired in the year 1906, but the rates as of 1901, by boat are almost identical, to-day, in 1911, with those which were covered by the contract. The Evansville & Bowling Green Packet Company, I might add, publishes rates not only between Evansville and Bowling Green, but between Evansville and the way landings; and I have heard no complaint from the people of Bowling Green of the fact that the rates from Evansville to the way landings, this side of Bowling Green, are very materially less than to Bowling Green, very materially higher, I should say—very materially higher. The long and short haul principle seems to worry in one direction and not in another."

And (Tr., p. 378), in answer to an inquiry as to whether or not the Louisville & Nashville Railroad Company had any financial interest in the Evansville & Bowling Green Packet Company, Mr. Goodwyn said:

"So far as I know, absolutely none whatever, and if it did have, I believe I would know, from the very nature and character of my connection with the railroad, and the official duties that I have to perform. I have seen the Company's Annual Report for a good many

years, to its stockholders, and I have never yet seen an item showing a dollar's interest in the Evansville & Bowling Green Packet Company reported amongst its other investments."

Attention is drawn to the fact that Mr. Goodwyn's statement as to navigation of the Green and Barren rivers is practically uncontroverted by complainant. Complainant's own statement of "Navigation of Green and Barren Rivers" (pp. 7-12 of its brief) shows that the competitive effect of water competition in the Green and Barren rivers on rates of transportation has never been substantial, material, or controlling. It has been affirmatively shown that neither the "flat boating," which was followed by the hardy race of men who made the trips to New Orleans with heavy laden boats and walked overland home; nor the completion of the locks and dams in Green and Barren rivers in 1841, by the State of Kentucky; nor the building by James Rumsey Skiles of "the second railroad in Kentucky, a railroad on which the cars were operated by horses or mules, and used for the purpose of hauling freight between the business portion of Bowling Green and the river, a distance of about one mile;" nor the fortunes made by some of Bowling Green's citizens who engaged in pork packing and in other lines of business and used the river as a means of receiving and sending out freight to the world; nor the appropriations which the Legislature, on account of the in-
616 sufficiency of the tolls, found it necessary to make from time to time "in order to keep the dams in repair and the locks in working order;" nor any of these facts, nor all of them combined, nor any other circumstances and conditions with respect to water competition at Bowling Green, in any way affected the rates of the Louisville & Nashville Railroad Company when it extended its line to Bowling Green in 1859. And it has been shown, on the contrary, that the effect of the competition in the Cumberland River at both Nashville and Clarksville, Tenn., on the rates of the Louisville & Nashville Railroad Company was substantial and controling when its rails reached those points. This is the keynote to the situation as to water competition. The competition at Nashville and Clarksville was then, and is now, either actually or potentially substantial and controlling. The competition at Bowling Green has always been, and is now, comparatively insignificant. The railroads met and did not create conditions which they found at Nashville and at Clarksville, and the railroad has fully met all the conditions of competition encountered at Bowling Green. The whole history of navigation of the Green and Barren rivers as given by complainant is a history of the failure to establish by artificial means a highway of commerce not provided by nature. From the beginning the project of the State of Kentucky for slack water navigation in the Green and Barren rivers was a failure. "The tolls, although considerable, did not yield sufficient revenue to maintain the locks and dams in proper condition, and it became necessary for the Legislature from time to time to make ap-ropriations in order to keep the dams in repair and the locks in working order. At times they got out of repair to such an extent that they could not be used, and it would be necessary to await a session of the Legislature

in order to secure an appropriation for the repair." (Plaintiff's brief, p. 9.) "The State, finding the maintenance of these locks and dams quite a burden, in 1868" (27 years after the completion of the work), "by an act of the General Assembly, leased said rivers with their locks and dams to the Green & Barren River Navigation Company, a corporation organized for the purpose of taking charge of said locks and dams." (Plaintiff's brief, p. 9.) And it is shown in the deposition of Capt. Bewley (p. 21) that the Green & Barren River Navigation Company paid no rental for the lease of these unprofitable improvements from the State. And the opinions of the Kentucky Court of Appeals in the cases of McReynolds vs. Smallhouse, 8 Bush, 447, and Commissioners of Sinking Fund vs. Green & Barren River Navigation Company, 79 Ky. 73, referred to by complainant (p. 11 of its brief), show that the preamble to the act of incorporation of the Green & Barren River Navigation Company, by which same act the lease was made, recited:

"Whereas the Green and Barren River Line of Navigation has always been a charge upon the State, and is now largely in debt and without prospect of any better condition, and whereas it is of great importance to the country to keep said line in working order and at the same time to avoid any public expense, if possible, and believing that object can be accomplished by letting it to an
617 incorporated company, Therefore be it enacted," etc.

Then, after the State of Kentucky had endeavored to maintain a line of navigation on the Green and Barren rivers for twenty-seven years and had wearied of the charge and tax upon its citizens, and after the patriotic citizens who desired the free navigation of the Green and Barren rivers for their own benefit had failed in their two attempts to prevent the Green & Barren River Navigation Company from collecting tolls for the maintenance of the locks and dams which it had assumed under its contract with the State, it seems that those same patriotic citizens, or others, whose ideas of civic improvement consisted in the fattening of private or special interests at the public crib, turned to the indulgence of a paternal Federal Government and secured in the Rivers and Harbors Act of August 8, 1888, an appropriation of "$135,000.00 for the purchase of the unexpired portion of the lease" (for which the Green and Barren River Navigation Company had paid nothing) "and certain property owned by the Green & Barren River Navigation Company" (plaintiff's brief, p. 11); and the United States Government, on December 11, 1888, assumed the burden of which the State of Kentucky had grown weary, and between 1889 and 1909, expended "on said rivers in repair and construction of locks and dams, and in equipment of same, and in the construction of two new locks and dams, the sum of $1,715,905.76" (plaintiff's brief, p. 12). The Green & Barren River Navigation Company, having received $135,000.00 from the Federal Government, evidently did not consider the navigation of the Green and Barren rivers, free of all tolls, as a very profitable undertaking, and after twenty years on the river the company "discontinued operations in 1888" (plaintiff's brief, p. 13). As is usually the case whenever the Government is supposed to

be handing out something for nothing, "after the rivers were made free of all tolls and the locks were open to all kinds of traffic, independent boats entered said rivers, and among those plying between Bowling Green and Evansville and competing for traffic were the Kerr, operated by R. T. Williams; the Evansville, operated by Capt. Lee Howell; the City of Clarksville, operated by Server; and the Gayoso, owned by Valentine and operated by Bewley" (plaintiff's brief, p. 13). But complainant does not show all of the facts as to the early competition of these independent boats. The first boat operated by Captain Bewley after the rivers were made free of tolls was not the Gayoso, but was the Evansville, owned by Mr. R. J. Meyler, which competed with the Steamer Blue Wing, owned and operated by Capt. R. T. Williams (Bewley deposition, pp. 4-5). These boats were operated from 1888 to 1890 (Bewley deposition, p. 20). The Steamer Evansville and the Steamer Blue Wing competed with each other in the river, and the Evansville, operated by Capt. Bewley, gave up first; she could not meet her debts, went out of the trade, and was sold by the United States Marshal to Capt. J. F. Klein (Bewley deposition, pp. 5 and 20). The Blue Wing was sold by Capt. R. T. Williams and withdrawn from the river.
618 Capt. Williams had gone into partnership with the Green River Packet Company, who owned the Steamer Rescue, and Capt. Bewley knew that the Rescue did not make any money and did not think the Blue Wing made any money (Bewley deposition, p. 22). Then the Evansville was brought back into the river by Capt. Lee Howell (Bewley deposition, p. 6), and Capt. Bewley tried again on the Gayoso, owned by Mr. Henry Valentine (Bewley deposition, p. 5). The Gayoso was operated by Capt. Bewley at a loss (Bewley deposition, p. 20), and was the first boat acquired by Capt. Howell after he acquired the Evansville (Bewley deposition, p. 7). After the name of the Gayoso had been changed to the name of the Park City, she was sold to Capt. Williams, of Louisville, for the Kentucky River trade (Bewley deposition, p. 8). The City of Clarksville, operated by Server, was run at a loss and sold by the United States Marshal and taken out of the river (Bewley deposition, pp. 7 and 21). Even in the days when the Green & Barren River Navigation Company had its "monopoly" of the rivers it was found that it would not pay in competition with the rail rates to make through trips to Louisville "by small boats such as the Green River boats are" (Bewley deposition, p. 31). And so, with a continuous record of failures in the effort to make a line of navigation of what nature evidently never intended so to be, we are brought down to the period of the Sun, 1901, or 60 years after the system of locks and dams in the Green and Barren rivers was completed by the State of Kentucky. And through all those 60 years there has been shown no water competition of any substantial or controlling effect on the rates of transportation at Bowling Green. In 1901, Capt. Bewley, with his record of failures on the Evansville and on the Gayoso, and in spite of the history of the failure of the traffic of the Green and Barren rivers to sustain competing lines of steamboats, was, under a trade or contract with certain merchants of Bowling Green, put in charge of the oper-

ations of the Steamer Sun, and the Steamer Sun put in effect a scale of rates by agreement with the merchants which were lower than the rates prevailing by the river on the other packet lines (Brewley deposition, pp. 12 and 13). The Sun lasted about eight months, and although the project was financially a failure, it appears that the launching of the Sun did affect the rates of transportation, at least by river, to a certain extent, a result not reached by any circumstances shown in the record for the previous 60 years' history of the rivers. As is shown by the testimony of Mr. D. M. Goodwyn, hereinabove quoted, and also by the testimony of some of complainant's witnesses, when the Sun went out of business in 1901, an agreement was made between the Evansville and Bowling Green Packet Company, on the one hand, and those citizens of Bowling Green who were interested in the Sun, on the other hand, under the terms of which the Packet Company obligated itself to maintain for a period of five years between Evansville and Bowling Green rates approximately the same as those which had been established by the Steamer Sun by agreement with the merchants, and although that contract would have expired in the year 1906, the present rates by boat are almost identical with those agreed upon for the Sun. And
619 now, after 71 years of failure, for 27 years of which period the locks and dams were maintained by the State of Kentucky, for 20 years of which period the rivers were maintained and operated by a private corporation, and for 24 years of which period the rivers have been maintained "free" by an indulgent Federal Government, without substantial effect on the rates of transportation at Bowling Green, complainant seeks to have this Commission establish by fiat a competition which has never existed, which does not now exist, and which can not reasonably be expected to exist hereafter. The egregious effrontery of which complainant is guilty in this effort to establish by mandate of the Commission an artificial and purely conjectural competition is apparent from a consideration of some of complainant's own contentions in connection with testimony given by complainant's own witnesses. Complainant, in the testimony introduced by it, and in its brief (pp. 12 and 47), has emphasized the fact that the Government of the United States has spent nearly two million dollars and is spending thousands of dollars annually on the Green and Barren rivers, and maintains those rivers "in splendid condition, both as to locks and dams and as to the channel, and keeps constantly on hand all of the equipment and force necessary to maintain the present condition of the rivers," and that "the City of Bowling Green and County of Warren have recently purchased and established a public wharf with over 900 feet of river frontage, and constructed a good macadam road from the City of Bowling Green to said wharf, which wharf is about a half mile from the city limits and about one mile from the business portion of said city, and at the most accessible and convenient place for a public wharf upon said river, and the same is to be maintained perpetually as a public wharf." Now, at 6 per cent, the interest on the investment made by the Government in the Green and Barren rivers amounts to $120,000 per annum, to say nothing of improvements

made on the rivers in former years and the burdens laid upon its citizens by the State of Kentucky for that purpose, or of the expenditures made by the City of Bowling Green and the County of Warren, as set forth on page 12 of complainant's brief. It is shown by the testimony of Mr. Greer (Tr., p. 253) that the cost of the Steamer Sun was only $9,000.00. We ask the following question: If the traffic on the Green and Barren rivers is worth the expenditure of two million dollars made by the United States Government, in addition to the expenditures previously made on the rivers by the State of Kentucky, and is worth, also, the establishment of a perpetually free wharf and the building of a macadam road by the City of Bowling Green and the County of Warren, why are the shippers and receivers of freight who are benefited by this line of transportation not willing to expend the comparatively insignificant sum of $9,000.00 in order to put in the river a boat which will not be under the domination which the Louisville & Nashville Railroad Company is alleged to exert over the present line of steamboats in the river? It will not do to say that such a boat could not live because rates would be temporarily cut. It is obvious that if the traffic of the Green and Barren rivers were worth the expenditures which have been made by
620 governmental agencies upon those rivers, and if the present rates of transportation were too high, it would be worth while to expend the sum required to buy a boat, to put that boat in the river, and keep it tied to the bank if necessary, in order to keep rates down to a reasonable level. It is clear from the history of the transportation in the Green and Barren rivers which has been given by complainant itself, and from the discussion of the evidence which we have given above, that the real meat of the matter and the required answer are to be found in the fact that the traffic of the Green and Barren rivers available for steamboats against the rates and facilities afforded by the railroads has never been, is not now, and can not in any reasonable time be expected to be sufficient to maintain a greater number of boats in the river, or sufficient to justify the deduction of rates either by river or by rail. If the Bowling Green Business Men's Protective Association of Bowling Green, Ky., thinks otherwise, it can easily make the experiment by expending $9,000.00 and putting a boat in the river. The boat will cost less than one good locomotive on the railroad. The boat will have no cost to incur for rails, ties, ballast, or right-of-way. Complainant has emphasized the fact that through the efforts of governmental agencies the river and the wharf are free. Complainant evidently believes that the expenditures by the United States Government, by the State of Kentucky, by the City of Bowling Green, and by the County of Warren, are justified by the traffic which they affect, and yet complainant is evidently unwilling to expend one-half of one per cent of those amounts in an effort of self-help, but comes with a petition to this Commission to declare by fiat what complainant has neither the courage nor the conviction to attempt to establish as a fact.

There Exists at Both Nashville, Tenn., and Clarksville, Tenn., Railroad Competition, Intensified by Competition of Markets. But No Such Competition Exists at Bowling Green, Ky.

There is no rail competition at Bowling Green, Ky. With reference to the rail competition at Nashville and Clarksville as affecting the rates covered by the complaint in this case, Mr. Goodwyn testified (Tr., pp. 361-370):

That one of the first railroads constructed in the south was the Charleston & Hamburg road, which was built from Charleston, S. C., to Augusta, Ga., in 1838. The line of the old Georgia Railroad & Banking Company, now the Georgia Railroad, was completed between Augusta and Atlanta about the same time. Traffic from the north and the east was moving via New York, Philadelphia, Baltimore, and the important dominating North Atlantic cities, and thence via coastwise vessels to Charleston and Savannah. Prior to the construction of the railroad from Charleston to Augusta a large part of the traffic moved by the Savannah River from Savannah to Augusta. With the completion of the Georgia Railroad and its connections traffic began to move from the South Atlantic port cities by rail, although the competition on the Savannah
621 River between Savannah and Augusta continued very strong, and is to-day a most important factor in the adjustment of rates to that immediate territory. Thus, about 1838, there was rail connection from the South Atlantic coast as far as Atlanta, and business from the north and east was moving to Atlanta via the route indicated, and was distributed in southeastern territory. Business moving in the other direction from the middle west and the west was handled either to New Orleans and thence by vessel around Florida and up to the South Atlantic ports, with various transfers and consequent delay, insurance, and damage, or it moved by way of the Cumberland River to Nashville and thence to Chattanooga, and from Chattanooga to Atlanta. This movement from Nashville to Chattanooga and Atlanta was by wagon until the completion of the Western & Atlantic Railroad. The Nashville & Chattanooga Railroad was completed between Nashville and Chattanooga in 1854, but it had been in partial operation as a local line for a number of years previous to that time. For a while this road participated in the handling of western produce and western freight merchandise generally, between Nashville and Bridgeport, Ala., at which latter point it connected with the boats operating on the Tennessee River between Bridgeport and Chattanooga. The Nashville & Chattanooga Railroad formed the first rail connecting link from the west, and handled the great bulk of traffic that was moved from and via that territory into the south and southeast. The Memphis & Charleston Railroad was completed in 1858. This railroad was built for the particular purpose of diverting the traffic which was moving via the Cumberland River and Nashville to the route via the Mississippi River, Memphis, and the Memphis & Charleston Railroad to Chattanooga. At Chattanooga the freight brought in by the Memphis & Charleston was distributed in the same way as the freight brought

into that point by the Nashville & Chattanooga Road. The line of the Louisville & Nashville Railroad between Louisville and Nashville was completed in 1859. Upon the completion of the line to Nashville, the Louisville & Nashville Railroad with its natural connection, the Nashville & Chattanooga Railroad, naturally came into competition with the Memphis & Charleston Railroad and the Mississippi River route. The Louisville & Nashville was nearer the sources of supply as a railroad than the Memphis & Charleston, and began to enjoy for its haul between Louisville and Nashville, the traffic which had previously gone down the Ohio River to the mouth of the Cumberland, near Paducah, or via the Ohio River through Cairo, or via the Mississippi River through Memphis, and it afforded a better and more natural and more convenient line for the handling of southeastern tonnage than did the line by way of Memphis; it also afforded a better route for the handling of this traffic than did the line via the Cumberland River to Nashville; but in its endeavor to divert to itself the business which had moved via the Cumberland River the Louisville & Nashville Railroad was compelled to meet the Cumberland River competition. The Nashville & North-
622 western Railroad, which extends from Nashville to Hickman, Ky., was completed some time between 1861 and 1865. It was turned back by the United States Government to the State of Tennessee at the close of the war, and in 1868 was turned back by the State to its own officers. It was leased to the Nashville & Chattanooga Railroad in October, 1869, and was purchased by the Nashville & Chattanooga Road in 1872. This road, from the Mississippi River, at Hickman, to Nashville, competed with the Louisville & Nashville Railroad, and added to the rail competition at Nashville. The Tennessee Midland Railroad, from Memphis to Lexington, Tenn., and the Paducah, Tennessee and Alabama Railroad from Lexington, Tenn., to Paducah, were completed about the year 1890, and the Paducah, Tennessee & Alabama Railroad was leased to the Nashville, Chattanooga & St. Louis Railroad in 1896. The Paducah, Tennessee & Alabama Railroad, from Paducah, Ky., to Hollow Rock Junction, Tenn., and the old Nashville & Northwestern Railroad, from Hollow Rock Junction to Nashville, formed another line from the Ohio River to Nashville. The Tennessee Central Railroad, which was completed twelve or thirteen years ago, forms, in connection with the Illinois Central Railroad, another line to the Ohio River, and, by its eastern connections at Emory Gap and Harriman, formed another route into Nashville from Cincinnati and Louisville, as well as between Nashville and the east. The Tennessee Central also opened up a route from Nashville into the southeast in competition both with the Nashville, Chattanooga & St. Louis, via Chattanooga, and with the lines of the Louisville & Nashville Road via Decatur, Birmingham and Montgomery. The Tennessee Central Railroad handles business between Nashville and the entire southeast. There is at Nashville extremely acute competition between carriers, and this competition is intensified by competition between markets which the different carriers serve. If the Louisville & Nashville Railroad should advance rates from Nashville to the Ohio

River, while the Tennessee Central and Nashville & Chattanooga Railroad still kept their reduced rates in effect, the result would be that the Louisville & Nashville Railroad would simply retire from the business and the Tennessee Central and the Nashville, Chattanooga & St. Louis would haul all the traffic.

Local pride, a competition of market with market, and the desire of particular communities to be served, resulted in the building of roads which competed with the line of transportation from the coast furnished by the old Charleston & Hamburg Road, the Georgia Railroad, and the Western & Atlantic. For example, in consequence of efforts of the citizens of Savannah, a railroad was built from Savannah to Atlanta via Macon, which is now part of the Central of Georgia Railroad, and which competed with the line of transportation from Charleston; and the old East Tennessee, Virginia & Georgia Railroad, now part of the Southern Railway, was built down from Bristol, Tenn., and handled business from the east through the port of Norfolk, via Dalton or Chattanooga, into Nashville. This line of transportation was called the Kennesaw Route. And
623 in that way a number of competing routes sprang up between the east and Nashville, Tenn.

Clarksville, Tenn.—which (Tr., p. 340), in addition to being served by the Cumberland River and by the Louisville & Nashville Railroad, is located on the Tennessee Central Railroad, 56 miles from Nashville by that line, and 29 miles from Hopkinsville, Ky., where the Tennessee Central connects with the Illinois Central Railroad—obtains through the Tennessee Central and the Louisville & Nashville, to a large extent, the benefit of the railroad competition which exists at Nashville, Tenn. The junction of the Illinois Central with the Nashville, Chattanooga & St. Louis at Martin, Tenn., affords another actively competing line between Nashville, Tenn., the Ohio River, and the north, not mentioned by Mr. Goodwyn; and a glance at any railroad map will show that Nashville and Clarksville have the advantage of railroad competition in all directions, intensified by competition of markets, by competition of the Atlantic ports, and by competition of rivers other than the Cumberland, on which Nashville is located. Or, as Mr. Fulton said (Tr., p. 310), the competition at Nashville and Clarksville is north, east, south, and west, crisscross, and every way you can make it.

The attorneys for complainant say (brief, p. 42):

"We think it is sufficient to establish our case with reference to the rates from New York to Bowling Green, and allow the rates from Chicago and St. Louis to Bowling Green to be adjusted in relation thereto;"

and we therefore think it well to quote verbatim Mr. Goodwyn's testimony as shown on pages 405 to 408, inclusive, of the record, with reference to the rates from New York.

"Mr. Goodwyn: When the Louisville & Nashville Railroad opened its line to Nashville, or shortly thereafter, it undertook to compete for the business from the east. The trunk line adjustment already prevailed from eastern territory to the then Ohio River crossings,

including Evansville, and the boats were in operation on the Cumberland River. The L. & N. Railroad then endeavored to make an arrangement by which it would equalize through Louisville and through Cincinnati the rates which were available from eastern territory, New York, as illustrating the point, via Bowling Green (Evansville) and the River; it adopted a number of expedients in the effort to accomplish that result. For a part of the time it carried proportional rates from Louisville, which added to the existing rate from the east to Louisville made up the rates which were available via Evansville and the boat line. It later established through class rates, governed by the official classification. The proportional rates which it carried were at one time so low as ten cents per hundred pounds. First class from Louisville through to Nashville was 16 cents, for quite a period 25 cents per hundred pounds. After the through rates were published from the east, and I do not find in reference to our old rate records anything showing through rates from the east to Nashville prior to 1882, but after the through rates were first issued, when the through rates were first issued they
624 were made, first class 1.09, second class 89 cents, third class 69, fourth class 54. At that time what is now official classification was then called trunk line classification, and had four classes in it. Those rates varied throughout the succeeding years, and during one period, in 1885, went as low as 56 cents per hundred pounds, first class, from New York to Nashville. I am not able to give, from the examination I made, what particular reason influenced that low rate—some competition of some kind, I have no doubt—they even went lower than 56, it went to 40, first class from New York to Nashville; in 1885, the low rate first class of 40 was advanced to 97, and that scale of rates prevailed, with but a slight interruption in 1886, until the year 1887, when a scale of rates was put in, 91 cents, 78, 60, 42, 36, 31. That scale of rates continued uninterruptedly from 1887 until the present time. What was originally undertaken to meet the competition in the Cumberland River and the combination available by Evansville, was in later years continued, by reason of the competition from the South Atlantic coast ports and coastwise steamers. I am unable to give you the distance in nautical miles from New York to Charleston and Savannah, but in the division of rates from the east by water to southern and southeastern territory, and to Nashville, the coastwise steamer lines prorating on the 250 miles from New York to Charleston and Savannah, and 250 miles for water transportation is generally conceded to be a fair relation to rail mileage. I believe it is either three or four to one.

"Examiner Boyle: Three to one.

"Mr. Goodwyn: Three to one, yes, sir. So that upon that basis the distance, New York to Savannah, 250 miles, accepted by the coastwise ocean lines in prorating the 549 miles from Savannah to Nashville, makes the rail and water distance from New York to Nashville 799 miles. The short line distance from New York to Louisville is 867 miles, and the distance from Louisville to Bowling Green is 114 miles, so that would be a total mileage of 981 from New

York to Bowling Green, as compared with what is considered to be a proper mileage of 799 miles from New York to Nashville by way of water. We could not of ourselves advance the rates from the east to Nashville for the reasons I have already stated."

The competition of the southern ports was shown in the statement made before this Commission by Mr. E. B. Stahlman on May 27, 1887, the year in which the present scale of rates was made effective, from which we quote as follows:

"Southern Ports as Competitors.

"In the further discussion of this question it is hardly necessary for me to refer at length to the commercial centers located on the Ohio and Mississippi rivers, or to the Gulf or South Atlantic coast ports embraced in this application for relief. Their advantages and surroundings are too well known to require any detailed argument from me.

"Commissioner Walker: It is rather curious that Savannah, Charleston, Mobile, New Orleans, these Gulf ports to which the
625 Southern roads make the lowest rates of any points on their line, should all of them substantially say that they want this law strictly enforced.

"Mr. Stahlman: The people at these ports believe that the enforcement of the act against the interior will advance the rates from the interior, and preclude the shipment on long rail hauls to and from the East and other distant markets, and therefore the business which the interior centers have been doing, and the cotton which they have been handling, will naturally drift toward the ports on short rail hauls, or float down the rivers and fall into their laps.

"Commissioner Bragg: A man's hand was never plainer to his eye than that is.

"Mr. Stahlman: One not familiar with the business of the South would suppose that these Southern ports were of great value to the railroad systems of the South. They are in some respects, but in the main they are competitors *to* the railroads. They are not to the Southern rail lines what the Eastern ports are to the trunk lines. The ports of New York, Philadelphia, Baltimore and Boston are feeders to the trunk lines. They do an immense business. Do any of these Gulf ports feed the Louisville & Nashville road? Assuredly not. It is a mere trifle as compared with the business furnished by the Eastern ports. The Southern ports import very little from abroad, so that the Southern roads realize but very little traffic and revenue from that source. The steamships entering the ports are engaged in the carrying trade between the Eastern ports and the South, and through the Eastern ports between the West and the South. It is safe to say ninety per cent of all the steamers which enter the Southern harbors are competitors *to* the rail lines instead of feeders. It is true they furnish an outlet for the products of the South, but that outlet is in the nature of a competitor *to* all of the interior Southern roads. The proof taken during the sittings of the Commission in the South shows very conclusively that a great deal of the competition between the South and the East and the South and the West is

forced upon the rail lines by vessels plying between the Southern and Eastern ports at very low rates. Congress has, from time to time, appropriated $5,483,571.62 for the improvement of these harbors. The railroad people have not complained, although these appropriations have added very materially to the competitive forces which they have been obliged to meet. The proof is clear, that many vessels entering the Southern ports come loaded with grain and other Western products as ballast, and returning take naval stores, rosin, cotton, etc., for the East and West, in competition with the rail lines."

Bowling Green Compared with Evansville and with Louisville.

General Comparison.

The location and circumstances and conditions as to transportation of Bowling Green, Ky., have been hereinabove stated. The
626 location and circumstances and conditions as to transportation of Evansville, Ind., and Louisville, Ky., are described generally by Mr. Goodwyn, as follows (Tr., pp. 341-342):

Evansville, Ind., is located on the Ohio River, and in addition to the boat lines operating *in* that river it is served by the following railroads:

The Louisville & Nashville Railroad, from the south and from the north.

The Louisville Division of the Southern Railway from the east and from the west.

The Illinois Central Railroad, from the north and south.

The Chicago & Eastern Illinois, from the north.

The Evansville & Indianapolis Railroad, from the north.

The Cleveland, Cincinnati, Chicago & St. Louis, commonly called the Big Four, from the north.

The Louisville, Henderson & St. Louis Railway, from the east.

The United States census for 1910 gives the population of Evansville as 69,647.

Louisville, Ky., is situated on the Ohio River, and in addition to the various boat lines operating on that river it is served by the following railroads:

The Baltimore & Ohio Southwestern.

The Chesapeake & Ohio Railway.

The Chicago, Indianapolis & Louisville Railway.

The Illinois Central Railroad.

The Louisville & Nashville Railroad.

The Pittsburg, Cincinnati, Chicago & St. Louis Railway.

The Southern Railway.

The Cleveland, Cincinnati, Chicago & St. Louis Railway.

Its population is given in 1910 as 223,928.

There is both river and rail competition at Evansville and at Louisville, while there is river competition only at Bowling Green.

Mr. Goodwyn also testified (Tr., pp. 385-386):

"Commercially speaking, and from the standpoint of a revenue

producer for the L. & N. Railroad, Louisville undoubtedly ranks among the first half dozen places on the line; there is no question about that. So far as its population is concerned, it ranks fourth, being exceeded in that respect by St. Louis, by Cincinnati, and by New Orleans, of all the cities reached by the L. & N. Railroad. We regard it as our own home town, the officers consider it, and we know from every day experience its commercial importance. We know positively that the importance of the place does not grow out of any unreasonable, arbitrary, unreasonable and unnecessary adjustment of freight rates, either on the part of the L. & N. Railroad, or, as far as I am able to judge, on the part of any other railroad serving Louisville. And what I have said of Louisville is approximately correct as to Evansville, likewise, which is also covered by this complaint, though of course commercially not as important as Louisville, nor is it commercially as important as Nashville, to us."

627 The Competitive Effect of the Green and Barren Rivers at Bowling Green, Ky., Compared with the Competitive Effect of the Ohio River at Evansville, Ind., and Louisville, Ky.

We again quote from the statement made by Mr. E. B. Stahlman before this Commission on May 27, 1887, In the Matter of the Application of the Louisville & Nashville Railroad Company, and Members of the Southern Railway and Steamship Association, for Relief from the Operation of the Fourth Section of the Act to Regulate Commerce:

"Ohio and Mississippi River Cities.

"The city of Cincinnati, located on the Ohio River, has the following lines of steamers plying southward:

"The United States Mail Line, daily, between Cincinnati and Louisville.

"The Cincinnati & Memphis Packet Company, composed of six steamers, between Cincinnati & Memphis.

"The Cincinnati & New Orleans Packet Company, composed of six steamers, between Cincinnati and New Orleans.

"In addition to these regular lines there are a number of steamers plying between Cincinnati and various points which have no connection with the lines named. It is hardly necessary to say that these lines and independent outside crafts afford active competition to the rail lines on all traffic to and from Cincinnati destined for important points located on the Ohio, Mississippi and tributary rivers and Gulf ports.

"The city of Newport, Ky., on the opposite side of the Ohio River from Cincinnati, enjoys like advantages.

"The city of Louisville enjoys the same advantages, with the addition of a line of steamers between Louisville and Henderson, Ky.

"The cities of Owensboro and Henderson, Ky., have all the benefits enjoyed by the city of Louisville.

"The cities of Evansville, Ind., and Shawneetown, Ill., enjoy like advantages."

We have hereinabove shown that the Green and Barren Rivers have never, during their entire history, exercised, and do not now exercise, any substantial effect on the rates of transportation at Bowling Green. It is believed that this Commission would take judicial notice of the difference between the competitive effect of the transportation afforded by the Ohio River and the competitive effect of the transportation afforded by the Green and Barren River Line of Navigation; but we shall, for the sake of completeness, refer briefly to the advantages in this regard which are possessed by Louisville, Evansville and other Ohio River towns.

The Ohio River.

On page 77 of the Preliminary Report of the Inland Waterways Commission, 1908, it is stated that the Ohio is the most im-
628 portant commercial stream in the country. And with reference to the river competition at Evansville and Louisville, Mr. Goodwyn said (Tr., pp. 359-360):

"The river competition at both Evansville and Louisville in years past was naturally very much greater than it is now; so far as the southern territory is concerned, the time was, and prior to the construction of the Louisville & Nashville Railroad, when the Ohio River and its connecting streams was one of the principal links, and an absolutely necessary link in the chain of service that enabled the middle west, the northwest, and the west to reach the southeast at all—there was no other means of getting there. With the construction of railroads of course the importance of the river has decreased as an active competitor for traffic. The condition is one now largely of potential competition, as I have undertaken to explain, in connection with the other situation already referred to. The river is there, and aside from the influences exerted upon freight rates by rail competition, competition with markets and product, the river is there, and its active competition could be revived at any time, within a reasonable period, of course, should there be any marked or great increase in freight rates by rail."

There Exists at Both Evansville, Ind., and Louisville, Ky., Railroad Competition, Intensified by Competition of Markets, but No Such Competition Exists at Bowling Green, Ky.

There is no rail competition at Bowling Green, Ky. With reference to the rail competition at Evansville and Louisville as affecting the rates covered by the complaint in this case, Mr. Goodwyn testified (Tr., pp. 370-371):

"Well, the rail competition at Evansville and Louisville has become intensified very greatly by the construction of additional railroads into and via both of those points. In answer to a previous question of yours, I give a list of the railroads serving both Evansville and Louisville and it would require but a very cursory examination of a standard map to show conclusively, I believe, that the character of the competition at both Louisville and Evansville now

is greatly in excess of what it was in the old days when those two communities were served by a few, smaller number of railroads. They have been railroad centers of importance for a great many years, far beyond either the period of my personal knowledge, or any investigation that I have ever made. I think that is a matter of common history."

How the Rates are Made.

From Ohio River Crossings.

Mr. Goodwyn explained how the rates are made from Ohio River Crossings to Nashville (Tr., pp. 386-390), to Clarksville (Tr., pp. 390-391), and to Bowling Green (Tr., pp. 391-396). He showed that it was found by actual experience that the first system of rates established to Nashville on a mileage scale would not meet the
629 conditions which existed at Nashville, etc. And he said that if the Louisville & Nashville Railroad could to-day advance its rates from the Ohio River and from St. Louis to Nashville and Clarksville, Tenn., and meet the conditions which exist at those points, and be permitted to make such an advance, it would do so just as soon as the tariffs could be gotten out. He explained No. 28 to the Southern Classification, and filed his Exhibit No. 2, which shows the class rates from Louisville to Bowling Green, Ky., as compared with the standard class rates of the Louisville & Nashville Railroad Company for 114 miles, the distance from Louisville to Bowling Green. This exhibit shows that the class rates from Louisville to Bowling Green are from 1 to 3 cents lower than the standard scale of rates which prevail on the Louisville & Nashville Railroad lines for that distance. Mr. Goodwyn also filed as Exhibit No. 3 to his testimony, a statement which shows how the class rates to Bowling Green have been supplemented by a very extensive line of commodity rates. Exhibit No. 3 shows, in the first column, rates that are to-day in effect from Louisville to Bowling Green upon commodities stated; in the second column, what the charge would be if the class rates now in effect from Louisville to Bowling Green were applied; and in the third column, what the charges would be if the standard class rates of the Louisville & Nashville Railroad Company for the distance were applied. This statement illustrates the very material reductions from the standard rates of the Louisville & Nashville Railroad Company which have been made in the commodity list from Louisville to Bowling Green. Mr. Goodwyn explained (Tr., pp. 394-395) that in making these commodity rates the rates of the Evansville & Bowling Green Packet Company from Evansville to Bowling Green were classified according to Southern Classification, with Note 28 exception, and that there were added the following differences to represent what we believed to be a fair charge for the advantage of rail service as compared with the river, and to cover partly the cost of insurance by river:

First class	10 cents
Second class	9 cents
Third class	8 cents
Fourth class	7 cents
Fifth class	6 cents
Sixth class	5 cents

and the other classes 5 cents per hundred pounds; and the resulting rates were taken as the Evansville-Bowling Green rates, which rates were applied on Bowling Green business from other Ohio River crossings, such as Henderson, Ky., Owensboro, Ky., and Louisville, Ky., and that the class rates on the same commodities from Cincinnati, O., were reduced proportionately.

On Commodities Outbound.

Mr. Goodwyn said (Tr., pp. 395-396):

"We have going out of Bowling Green a number of (rates on) commodities that were made specially for, as we saw it and be-
630 lieved, the needs of the city, but I don't suppose it is necessary for me to read that lengthy explanation into the record; I am just giving a general idea. Now I just want to say one word * * * I just want to say that from the best information I have been able to obtain of all the business that is brought into Bowling Green, Ky., the Louisville & Nashville Railroad handles approximately 80 per cent, the boats about 20 per cent; of all the business going out of Bowling Green we handle approximately 95 per cent, the boats about 5 per cent. I think that statement can be taken, certainly it is to my mind, as conclusive evidence that the Louisville & Nashville Railroad has amply met the river competition at Bowling Green."

Relative Importance of the Traffic Moving into Bowling Green on the Commodity Rates.

Mr. Goodwyn said (Tr., p. 397):

"Practically two-thirds of our revenue on freight brought into Bowling Green is derived from the handling of these commodities covered by those special rates, and one-third on the class rates."

And he stated that the proportion of tonnage handled on commodity rates would be considerably greater. For the month of October 1911 (Tr., pp. 397-398) the tonnage and revenue for freight from Louisville proper to Bowling Green proper were:

Handled on commodity rates, 887,615 pounds, revenue $1,313.14.

Handled on class rates, 198,642 pounds, revenue $701.80.

From Chicago, etc.

In explaining the rates from Chicago, Mr. Goodwyn said (Tr., pp. 399-404):

"The rates from Chicago to the Ohio River on business going to Nashville, Clarksville, or to Bowling Green, are made by the north-

ern roads. We do not make them; we haven't anything in the world to do with the making of them. Prior to 1905, the rates from Chicago to the Ohio River on business for Bowling Green and the rates from Chicago to the north bank of the Ohio River on business for Nashville and Clarksville, were precisely the same, with the exception that to Nashville and Clarksville the rates were governed by the Southern Classification, while to Bowling Green they were governed by the Official Classification. The rates from Chicago to the north bank of the Ohio River crossings on the 40 cent scale, governed by the Official Classification, are made less than the normal rates of the northern lines for the distance from Chicago to the north bank. The only difference then prior to 1905 was the difference of the classification, at that time, as testified to by Mr. Fulton, last night, rather, the northern lines believing that it was to their interest, and the proper thing to do, to reduce their proportional rates or divisions of through rates on business going to the southeast, for the purpose of more nearly making the total rates to the southeastern territory in line with the rates from the east. There had been a great deal of agitation and complaint about the situation, complaint that there was an unfair adjustment
631 from the east as compared with the west, improper adjustment of the freight rates and it was met by this reduction, that in the differentials or rates applicable to that particular territory, at least the greater part of it, *it* not all—I won't be sure about that being, as a territory to which the rates from the east are not made on combination, they are made, most of them, primarily by the water routes to the South Atlantic ports, and it was to meet that situation, as I understand, the lines from Chicago reduced their differential. However, the rates to points in Kentucky from the east, and certainly to points in Kentucky—this portion of the State—are made from the east of the Ohio River combination, or on the lowest combination, and consequently I have no doubt that the Chicago lines saw no occasion for reducing their proportion to that particular territory, as the rates from Chicago to the north bank of the Ohio River were already considerably less than the rates from the east to the same crossings. I do not want it to be understood that I am speaking as to universal conditions in the State of Kentucky. There are points on the line of the Chesapeake & Ohio Railroad where that situation does not exist, but they are so near to Cincinnati that the combination from Chicago through Cincinnati to that territory is, generally speaking, materially under the actual rates carried by the Chesapeake & Ohio Railroad, they are its own rate-; I have no doubt that is the reason why this 35 cent scale was not made applicable by the northern roads to the Kentucky territory. From my own knowledge of the rate adjustment in the north, I am prepared to supplement what Mr. Fulton said regarding the entire relation of their rates. They are to an extreme, unusual, and in my judgment unnecessary, extent related one to the other, so interwoven, the one with another, that it is difficult, if not impossible to change any rate of importance without changing hundreds of thousands of other rates. I will illustrate that by saying that in the Lake

561

navigation points from Chicago and the east, it formerly was the custom to reduce the rate on grain and corn products, the Central Freight Association and the trunk lines having a list of the commodities which they put under what they call the grain and commodities list. That list originally, of course, began with flour and meal. It has been extended until now it takes in cotton-seed meal, it takes in linseed meal, and a number of other articles as to which primarily they regarded the rate, that it should be properly the same as on flour and corn meal. Well, when the Lake navigation was opened, the immense tonnage of flour and corn meal that was available for lake boat transportation, they deemed it necessary to make a reduction from Chicago to New York, Boston, Philadelphia and Baltimore, and that was made on corn products. The result of it was a reduction in the rate on cotton-seed meal from St. Louis, from Evansville, Cairo, and Louisville, to Memphis, and because of that reduction, a reduction from the entire southern cotton producing territory, because of the Lake navigation from Chicago to Buffalo. I do not see how this could change their adjustment to Kentucky territory and confine it to Chicago, or to points in the Chicago & Ohio River Committee's territory; it would inevitably extend east of the boundaries of that Committee. I do not believe, as a matter of competi-
632 tion, that the lines serving Cleveland, Ohio, would depart from the adjustment of rates that they have maintained for a great many years until they made the rates from Cleveland to Cincinnati the same as from Chicago to Cincinnati; if Chicago to Cincinnati were reduced for Kentucky, Cleveland would be reduced; if Cleveland were reduced, Detroit, Toledo, Sandusky, Buffalo, and Pittsburg, the whole territory would come down. Of course that does not affect us, that situation does not affect us, south of the River, any more than the total rate is affected by any change they might make in their part of it."

Mr. Goodwyn said (Tr., p. 404) that the explanation which he had given as to Chicago applied to rates from other northern points in the same territory, such as Indianapolis, and South Bend.

From the East, New York, etc.

We have quoted, supra, Mr. Goodwyn's testimony as shown at pages 405 to 408 of the record, with reference to the rates from New York to Nashville. Further explanation made by Mr. Goodwyn of the rates from the east, New York, etc., to Nashville and to Clarksville will be found at pages 408 to 410, inclusive, of the transcript of the testimony.

From St. Louis.

Mr. Goodwyn's explanation of the adjustment of rates from St. Louis is shown on pages 410 and 411 of the transcript of the testimony.

On Commodities Shown in Paragraph IX of the Complaint.

In explanation of the rates on commodities shown in paragraph IX of the complaint, Mr. Goodwyn said (Tr., pp. 412-413):

"Well, from every point of origin, and on every commodity mentioned in Section 9 of the complaint, to Bowling Green, the rates are made on the lowest combination, whatever that combination may be, whether it be on the Ohio River or any other point—except as to buggies from Cincinnati, cabbage from Evansville, glassware from Cincinnati, white lead from Cincinnati and St. Louis, wall paper and wrapping paper from Cincinnati and St. Louis, cast iron and soil pipe from Cincinnati, lead pipe from Cincinnati, wrought iron pipe from Cincinnati, plows from Evansville, seeds from Evansville, syrup from Nashville, tobacco from Cincinnati and Evansville, tinware from Cincinnati, tinware and woodenware from Cincinnati and St. Louis—as applied to those points the rates to Bowling Green were made upon the basis which I have previously explained as to the adjustment from Louisville and from the other points reached by the rails of the Louisville & Nashville Railroad. In all of the other cases to Bowling Green the rates are made upon the lowest combination. Precisely the same thing is true both as to the points beyond the line of the L. & N. Railroad and points on the line
633 of the L. & N. Railroad, as to the rates to Clarksville and Nashville, except the cove oysters from Columbia (?) to Nashville and Clarksville, coffee from New York, wall paper from Worcester, Mass., canned sardines from Eastport, Me., and bicarbonate of soda from Syracuse, N. Y.; those rates to Clarksville and Nashville are made upon the eastern trunk line basis to which I have already referred. I can, if it is necessary, give you in detail the factors used in making every one of the rates with reference to the I. C. C. tariff, but it would take several hours to do it, and I judge that is unnecessary. Some of the rates in that section of the complaint are incorrectly stated. * * *"

Mr. Goodwyn said (Tr., p. 413) that with respect to the specific commodities named in Paragraph IX of the complaint the same competitive conditions apply which apply in connection with other traffic from the territories of the several points of origin, and which had already been explained.

On Sugar from New Orleans.

Mr. Goodwyn showed (Tr., pp. 414-417) how the rates were made on sugar from New Orleans, and explained that the rate of 20 cents on sugar from New Orleans to Bowling Green was an especially low rate, put in for the specific purpose of meeting competition of the river; and that (Tr., p. 416) "it was considered that the 20 cent rate would accomplish that purpose, and furthermore 20 cents per hundred pounds was the rate that was asked for by the Bowling Green people; it was established at their request."

On Eggs and Dressed Poultry to New York and Tobacco to Cincinnati, Evansville, Louisville, and Memphis.

With reference to Paragraph XI, of the complaint, which relates to the rates from Bowling Green, Ky., on eggs and dressed poultry to New York, and on manufactured tobacco from Bowling Green to Cincinnati, Evansville, Louisville, and Memphis, as compared with the rates from Nashville on the same articles to the same points of destination, Mr. Goodwyn said (Tr., pp. 418-420):

"There are not only in effect through rates from the east to Nashville, but also from Nashville to the east, and these rates on eggs and dressed poultry from Nashville to the east are the class rates governed by the Official Classification. I have not gone back into our records to determine when the adjustment was first made from Nashville to the east. I do know, however, that at the present time it is an adjustment that the L. & N. Railroad could not control, except to the extent *or* advancing its individual rates, and getting out of the business. Whatever the competitive conditions were, and especially the water competitive conditions, I think it is perfectly obvious that competition by water does not actually or potentially exist as concerning certain commodities, and I do not believe there is any actual or potential water competition at Nashville necessitating the continuance of any such rates as these on eggs and dressed
634 poultry. I will say that frankly. That is my personal belief, and I would be very glad indeed to advance the rates on eggs and dressed poultry from Nashville to the east, to the basis of actual combination, if I could do so and haul any of the business. I would do so just as quick as I could get the tariff out; but unfortunately, I can not. This condition, so far as those communities are concerned, is one that is by no means an agreeable one to me. I would be glad to advance the rate if I could, but I see no benefit that would result to Bowling Green if we did haul no eggs and poultry out of Nashville and still maintain our present rate at Bowling Green."

At this point Mr. Thomas interrupted with the question: "Who do you mean to say would haul it?" And Mr. Goodwyn replied:

"The Nashville & Chattanooga and the Tennessee Central Railroad." And continued: "So far as the tobacco rates are concerned, they were established from Nashville by our competitors, and over our protest. So far as the tobacco rates from Bowling Green are concerned, they were made after the conference which took place in Louisville in 1906, and were, to the best of my knowledge and belief, agreeable and satisfactory to the Bowling Green interests represented at that conference."

Oranges from Jacksonville, Fla.

With reference to Paragraph XII of the complaint which relates to the rates on oranges from Jacksonville, Fla., proper, and from Jacksonville, Fla., from beyond, to Bowling Green, Ky., and to Louisville, Ky., Mr. Goodwyn said (Tr., pp. 420-424):

"The Southern Classification makes oranges second class. There *are* in effect a line of class rates from Jacksonville, both to the west (by which I mean the Ohio River) and to the east. In 1892, which was before my connection with the L. & N. Railroad, you understand, the lines in Florida, anxious to assist in the development of the orange growing industry in that State, reduced the rates on oranges, and made them, instead of second class, the same as fourth class, L. C. L., and the same as sixth class in carloads, there having been what they regarded as a proper rail adjustment of the class rates to the east and the west, I have no doubt they considered that in making the uniform reduction to both territories they preserved the parity. They desired, of course, to make the markets of consumption for their fruit as numerous and as extensive as they possibly could, to encourage the growing of oranges, and the shipment over their rails, and the consequent increase of their revenues, and furthermore, influenced by the necessity of placing the Florida orange in competition with the California, and West Indian product. There were in those days large quantities of oranges imported through New Orleans and through Mobile, carried into the interior, to Louisville, Cincinnati, Evansville, distributed generally throughout the territory. The rates were made on the bases I have named, from Jacksonville, and Jacksonville is universally regarded as the basing point for all of the Florida territory—anything that goes south of Jacksonville is based on Jacksonville, anything that comes from south of Jacksonville is based the same way. Some time after that the growers, or their representatives—collections of growers, probably, established houses in Jacksonville, and they brought the fruit in there and distributed it from Jacksonville. Of course in bringing the fruit in, it meant a terminal service in the delivery at Jacksonville, not only taking that same fruit out, it meant that same terminal service given going in the reverse direction, neither of which terminal services was performed when the fruit was shipped direct from where it was grown to where it was distributed. In view of those conditions, the Jacksonville line felt that it was entitled to some revenue for that service at Jacksonville, and consequently they advanced their rates, Jacksonville, proper, 3 cents per standard crate. This accounts for the difference between rates of Jacksonville proper and Jacksonville from beyond, so that since that change was made, a through shipment goes on the same basis as it did before, but when it goes into Jacksonville, delivered there, and subsequently reshipped, there is an additional charge of three cents per standard crate for the terminal service. The rates on oranges, both from Jacksonville, Fla., proper, and Jacksonville from beyond, as named in Section XII of the complaint, are wrong. I believe they were based on the Louisville combination, the correct and lower combination being on Nashville, which is covered by our answer to the complaint. The correct rate, Jacksonville proper to Bowling Green, carloads, being 60.2 per box, less than carloads, 80.2 per box; Jacksonville from beyond, 57.2 per box, carloads, 79.2 per box, less than carloads. The conditions existing at Louisville, from a competitive standpoint,

635

are not the same as those existing at Bowling Green; one thing alone, there is not the competition here with the California oranges that there is at Louisville. The same difference in that respect, as Mr. Graham mentioned yesterday, about canned and evaporated fruits. Furthermore, that it would not be the same competition here with the imported oranges, unless the L. & N. Railroad would make the extremely unusual adjustment of applying the Louisville rate to Bowling Green, which it has never done heretofore. I do not myself see any tremendous disadvantage here; I doubt if any reduction of the rate would materially increase the movement of oranges—of course, though, that is something I don't know. The difference in rates makes a difference of one-twelfth of a cent to the orange, or about one cent a dozen."

On Cattle and Hogs to Chicago, Ill.

With reference to Paragraph XIII of the complaint, which concerns the rates on cattle and hogs to Chicago, Ill., Mr. Goodwyn said (Tr., p. 424):

"The complaint is wrong. There is no additional charge of $2.00 per car added to the charge of 15 cents per hundred in constructing the rate from Bowling Green, as alleged in the complaint."

636 And he explained (Tr., pp. 424-425) that the Louisville & Nashville Railroad Company does not wish to handle any double deck hogs at all, but the double deck rates are handled out of Nashville because of competition with the Nashville, Chattanooga & St. Louis Railway.

The Proportional Rates Applicable on Business from Chicago to the Southeast.

The confusion of issues in pages 32 to 35, inclusive, of complainant's brief, with reference to the proportional rates applicable on business from Chicago to the southeast, and the absurd suggestion (p. 34 of complainant's brief) that it seems to have been Mr. Goodwyn's first intention to shift the responsibility for the proportional rates to Mr. Fulton's shoulders, can arise only from a misunderstanding on the part of our opponents of the facts presented by the record, and of the respective interests represented by Mr. Fulton and by Mr. Goodwyn. The pages devoted by complainant to the purpose of showing that Mr. Fulton did not answer for anything south of the Ohio River represent just that *must* wasted space. Mr. Fulton commenced his deposition (Tr., p. 288) with the statement that he represented "the railroads north of the Ohio River." And he explained (Tr., p. 290) that there was no basis for making through rates from territory north of the Ohio River to interior Kentucky points, excepting upon the combination of local rates to and from Louisville, Cincinnati, Evansville, or Cairo, as the case might be; and (Tr., p. 291) that the proportional rates applicable north of the river on business to or from Southeastern or Green Line

territory are made to or from the north bank of the river, and that these rates (Tr., pp. 292-293) are really "not only proportional rates, but they are what have been considered for twenty-five or thirty years as divisions of through rates on Southeastern territory traffic," which have nothing to do in any way, shape or manner with the rates to or from interior Kentucky points. The only effort to shift to Mr. Fulton's shoulders any responsibility as to rates south of the river was that made by attorney for complainant, who insisted upon cross-examining the witness, not only as to the rates north of the river, but also as to the rates south of the river, concerning which he had not testified (except as to their comparative reasonableness), with the result that witness iterated again and again what he had repeatedly stated in his direct examination—that his testimony and interest related to the rates north of the river, and not to rates south of the crossings. Mr. Goodwyn from the first, as has been hereinbefore set out in detail, undertook the burden to, and did, explain in all of their aspects the rates south of the Ohio River crossings.

The situation with reference to the proportional rates north of the Ohio River applicable on business from Chicago to the southeast as compared with the local rates from Chicago to the crossings applicable in combination on business to interior Kentucky points (as explained both by Mr. Fulton and Mr. Goodwyn) is
637 briefly this: the proportional rates applicable north of the Ohio River on business destined through Kentucky to points beyond in Southeastern or Green Line territory are simply the proportions or divisions of through rates accruing north of the river, and are, as is usual where there is any difference, somewhat lower than the local rates used in combination to intermediate or Kentucky territory. When the proportional rates are used in connection with traffic to Southeastern or Green Line territory they represent, of course, a smaller percentage or proportion of the total longer haul than do the local rates of the total shorter haul, when used in combination on traffic to intermediate or Kentucky territory. That the proportional rates or divisions of through rates are lower than the local rates is entirely consonant with the general principles of rate-making observed in such cases.

But the principal reason why the proportional rates are lower than the local rates to the Ohio River is to be found in the fact that in the case of traffic to which the proportional rates are applicable there is encountered competition which is not met with in the case of traffic to which the local rates are applicable. As was indicated by Mr. Fulton (Tr., pp. 298-299):

"This so-called Green Line or Southeastern territory is competitive territory. St. Louis, to and from the Ohio River crossings, is competing into that territory with the rates that are made from Boston, New York and Philadelphia; Chicago is competing with St. Louis on Ohio River crossings; Chicago is also competing with New York. That is the reason—that is what forces those proportional rates and the application of the Southern Classification. * * * I think I explained one feature of it more particu-

larly by calling attention to the fact that during the first part of May, 1905, the St. Louis and Chicago lines interested in the handling of this traffic from Cairo and Evansville to the southeast, thought that is was necessary to make a still further reduction in their proportion or their differentials in order to more nearly equalize the through rates that were in effect from the Eastern Atlantic cities, not only all rail, but rail and ocean, and all ocean."

And, as Mr. Fulton testified (Tr., p. 299), the difference is briefly this: that the eastern markets and western markets are engaged in a fierce competition in Southeastern or Green Line territory, while they are not engaged in such competition in Kentucky territory. Mr. Fulton testified (Tr., p. 311) that so far as the lines north of the Ohio River are concerned, interior Kentucky stands alone, and a glance at the map will quickly reveal the physical reasons for this very natural traffic result. The Cumberland Mountains lie between interior Kentucky and the eastern seaboard; and between the Ohio River on the north and the Tennessee State line on the south there is not a single east and west line which crosses the eastern boundary of the State, and the line which crosses at Cumberland Gap is not an eastern seaboard line, but is the Louisville & Nashville Railroad, the same line with which the Chesapeake & Ohio and the northern trunk lines make connections at the Ohio River crossings on traffic from New York and other eastern cities.

638 The first crossing of the mountains south of Catlettsburg which brings the east into direct competition with the west is that represented by the line of the Norfolk & Western, the Southern Railway and the Tennessee Central, through Emory Gap, and the Tennessee Central serves both Clarksville and Nashville, and does not serve Bowling Green, Ky. The next east and west line which affects the Southeast on traffic from the East is that of the old E. T. V. & G., now Southern Railway, which connects with the Nashville, Chattanooga & St. Louis Railway at Chattanooga, and thus serves Nashville. But, as we proceed southward and reach Atlanta, we encounter a myriad of routes from both the North Atlantic and South Atlantic ports, which enable the traffic of the east to compete vigorously in Southeastern or Green Line territory with traffic from Chicago and other northern, western or northwestern markets. Interior Kentucky stands alone in this regard, because it is so placed by its geographical location and lack of competitive conditions.

As was reiterated by Mr. Fulton (Tr., p. 320), the Chicago lines north of the Ohio River do not have any competition to meet in local Kentucky, and the reason for this is apparent from the testimony of Mr. Fulton shown on page 319 of the transcript, and from the testimony of Mr. Goodwyn which appears in the transcript at page 401. The rates to Southeastern territory are made primarily by water routes to the South Atlantic ports, and it was to meet that situation that the lines from Chicago reduced their differentials on the business to that territory, while the rates to points in Kentucky from the east, and particularly to Bowling Green, are generally made on the Ohio River combination; and as the rates from Chicago to the Ohio River are already less than the rates from New York to

the Ohio River, the Chicago lines obviously find no necessity for reducing their local rates to meet New York competition through the Ohio River gateway.

To Atlanta, Ga., Montgomery, Ala., and Jackson, Miss.

With reference to paragraph XV of the complaint, Mr. Goodwyn explained (Tr., p. 427) that the rates to Jackson, Miss., are made by the Illinois Central Railroad in competition with the Mobile & Ohio to Meridian; and (Tr., p. 429) that there is a large and continuous movement of merchandise under the class rates to the territories represented by Jackson, Atlanta and Montgomery, not only from the Ohio River, but also from Nashville, which is not only a distributing center, but is likewise a manufacturing point of considerable importance; the rates from the Ohio River points are gateway rates—that is, business that moves from Pittsburg, Cleveland, Columbus, Detroit, Chicago, Indianapolis, Buffalo, etc., passes through the Ohio River gateways, and a very large proportion of it pays the class rates south of the river. So far as Mr. Goodwyn knows, there is not any business from Bowling Green to that territory under the class rates: "Bowling Green does not ship hats, caps, boots, shoes, groceries and iron articles, buggies, wagons and things of that sort to the territory"; and (Tr., p. 430) if a manufacturer were established there making that line of goods the Louis-
639 ville & Nashville Railroad would be perfectly willing to make not higher than Louisville rates on that business, and has done it already with respect to everything manufactured at Bowling Green of which the company has knowledge; and (Tr., p. 431) the reasons for the lower rates from Louisville, Evansville and Nashville to this territory are to be found in the fact that there exists from Louisville, Evansville and Nashville, competition either by water, on the one hand, or between carriers and markets, on the other, which does not exist at Bowling Green, and in the further and more controlling fact that there is daily and constant need of the rates from the Ohio River and from Nashville and there is not any need of them at all from Bowling Green.

The statement made by complainant on page 43 of its brief that the adjustment of rates from the Ohio River crossings to southern and southeastern points is merely the result of market competition, is pure assertion, unsupported by the record or by fact. The rate from Louisville, Ky., to Atlanta is the same as the Baltimore rail and water rate, not because it is the Baltimore rate, but because the adjustment of Louisville and Baltimore rates represents the crystallization of active and controlling competitive influences which forced that adjustment.

Mr. Goodwyn stated that if there were any need of outbound rates on commodities produced or manufactured at Bowling Green, the Louisville & Nashville Railroad Company would put in such rates to the South and Southeast not higher than Louisville rates, but complainant failed to show a single instance in which such rates were required and not given.

Complainant did introduce some testimony with reference to outbound rates on furniture, but this did not relate to business to the

Southeast, but to an effort to job in Kentucky and neighboring territory, part of which was beyond Louisville or Evansville, in competition with Louisville, Evansville and Nashville. This testimony which was given by Mr. Greer, and which it was stipulated would be corrobated by Mr. Kister, did not relate to any of the rates complained of in this proceeding; but, inasmuch as complainant (brief, pp. 36-37) has referred to this testimony in support of its contention that outbound rates should be lower, we respectfully draw the attention of the Commission to its farcical nature as exposed by Mr. Greer's cross-examination. It appears from that cross-examination (Tr., p. 259) that Mr. Greer went into business without any consideration of the effects of freight rates; (Tr., p. 260) the plant with which Mr. Greer expected to compete with enormous furniture plants in other parts of the country represented a paid-up capitalization of $17,000.00, and he borrowed $7,500.00 as a working fund; (Tr., p. 261) the majority of his business was local, less than carload, small shipments; (Tr., pp. 261-262) the first business he did was in "Central Kentucky," embracing Lexington, Paris, Winchester and Mt. Sterling (all of which are, themselves, considerable towns, and are located in the northern and eastern part of Kentucky beyond Louisville, Ky.). Lexington is served not only by the Louisville & Nashville, but also by the Cincinnati, New Orleans & Texas Pacific Railway and Chesapeake & Ohio Railway, and Winchester
640 is served by the Louisville & Nashville, the Chesapeake & Ohio and the Lexington & Eastern, and Mt. Sterling is on the Chesapeake & Ohio line. Although assuming to give freight rates as the cause of his failure, Mr. Greer admitted (Tr., pp. 262-263) that he did not know what the manufacturing cost of a suite was; that he did not keep any cost account in his factory; that he did not really know the rates to those Central Kentucky points (Tr., p. 263); and (Tr., p. 264) that when he was testifying to his trouble consisting in the freight rate he was stating merely what some salesman told him one of the customers had told him was the reason they did not buy; (Tr., p. 264) that Nashville seemed to have the lead in the lower end of the State, and New Albany in the northern end of the State, and (Tr., p. 265) that Nashville was not a competitor in Central Kentucky territory; that his competition in Central Kentucky territory was from New Albany; that his freight rates as compared with New Albany (the haul from Bowling Green being about double that from New Albany) were about one-third higher, and amounted to about a dollar on the highest-priced suites, and about (Tr., p. 266) 70 cents on the lower-priced suites. With reference to his business in other territory, Mr. Greer testified (Tr., p. 266) that he got down to Hopkinsville in competition with Nashville (it is here noted that Hopkinsville is about 73 miles from Nashville and 74 miles from Bowling Green); and (Tr., p. 267) that his salesman went clear through to Memphis on the branch, and they went to Gallatin on the main line (Gallatin is only 28 miles from Nashville, and 45 miles from Bowling Green). He admitted (Tr., p. 268) that he did not know, as a furniture man, what was the nature of the competition which other manufacturers in furniture have to meet, on the part of the manufacturers at Tell City and

Cannelton; and (Tr., p. 269) that he did not come in competition with furniture manufactured at Asheville and High Point, which places manufacture the same class of goods that he made, and he did not feel the force of their competition. We submit that there is nothing in Mr. Greer's testimony which goes to show in any way that Bowling Green is not granted proper rates on outbound freight.

We have thus shown conclusively that Bowling Green has all the outbound rates which its outbound business entitles it to, or which it requires, and we have shown that the enlightened self-interest of the Louisville & Nashville Railroad Company would cause it to grant to Bowling Green, for reasons of market competition, rates not higher than Louisville rates on any commodities which Bowling Green might produce for shipment; and we shall now proceed to demonstrate the obvious to show that there are conditions of competition other than that of markets which affect the rates from Louisville, Evansville, other Ohio River crossings, Nashville and Clarksville which do not exist at Bowling Green. On all business moving via Clarksville to Jackson and other points in Mississippi Valley territory, or via Nashville, to points in Southeastern or Mississippi Valley territories, Clarksville and Nashville are intermediate to Bowling Green; and, besides, Clarksville and Nashville both have rail competition to these territories and can ship by a number
641 of routes, and consequently any suggestion that Bowling Green should have the same rates as either Nashville or Clarksville is absurd. Bowling Green is not intermediate to Evansville on any traffic to the Mississippi Valley or to the Southeast; but Bowling Green is intermediate to Louisville on traffic via the L. & N. from Louisville to Montgomery, or Jackson, and also on business from Louisville to Atlanta handled via the L. & N., Nashville, and the N., C. & St. L., instead of via the L. & N.'s own line to Atlanta. The situation at other Ohio River crossings is, as has been explained in the record in this case, and as is fully understood by this Commission, similar to that at Louisville, and consequently the explanation of lower rates southbound from Louisville to Atlanta, Ga., Montgomery, Ala., and Jackson, Miss., than exist from the intermediate point, Bowling Green, to the same points of destination may be taken as typical.

Complainant says that the adjustment is due to market competition only. We have shown that even if the adjustment were due to market competition alone, Bowling Green has not been discriminated against, and cannot complain, because it has been granted and will be granted Louisville rates on all commodities for which it is or may hereafter be a market of production or distribution, and Bowling Green is not a market of production or distribution for traffic covered by the class rates complained of. But, in view of the unwarranted assertion of complainant that there is no other reason for the Louisville rates than the arbitrary adjustment of the carriers to meet market competition, we shall, at the risk of tiring the Commission by giving an explanation that is patent, and which we believe this Commission fully understands, show that complainant's assertion in this regard is not true. Complainant can not deny that Jackson, Miss., is located on the Pearl River, a navigable stream,

which can be reached from Louisville, Ky., by way of the Ohio and Mississippi rivers, canal and Lake Borgne, without leaving inland waters. But, what is more material, complainant can not deny that traffic from Louisville to Jackson may move by way of the Ohio and Mississippi rivers to Vicksburg, and thence 44 miles via the Queen & Crescent Route, which is a line competing with the Yazoo & Mississippi Valley Railway and Illinois Central Railroad from Memphis, from Paducah, or from Louisville direct. And, as shown by the record, the rates to Jackson are made by the Illinois Central. Montgomery, Ala., is located on the Alabama River, a navigable stream, of which the Inland Waterways Commission says in its preliminary report, 1908 (p. 63):

"Rates quoted on first six classes of through freight from the East to Montgomery via sea and river are said to average 12 cents per 100 pounds lower than the corresponding all rail rates."

Atlanta, Ga., is not located on a navigable stream, but, as was testified to by Mr. Goodwyn (Tr., p. 474), the rates to Atlanta are made in a general way with reference to water competition. But what seems to be the most important fact to be considered in this connection is that the rates from Louisville and other Ohio River
642 crossings to Atlanta, Montgomery, etc., are gateway rates, and are rates forced by direct competition of carrier with carrier, and which involve competition of the Atlantic Ocean or other water competition.

For example, traffic from Cleveland, Ohio, may move to Atlanta, Ga., either through Cincinnati, Louisville or other Ohio River gateways, on the one hand, or through Baltimore, rail and water, or Norfolk, or other Virginia cities, on the other hand. There is thus a direct competition of carrier with carrier between the carriers which serve the Ohio River gateways and the carriers which serve Baltimore and the Northern Atlantic ports, or the Virginia cities. And there is also obviously competition between carriers which serve the different Ohio River crossings. There is no such competition at Bowling Green, Ky.

Previous Consideration of the Same Problems.

The question of rates to and from Nashville and Clarksville, Tenn., Louisville, Ky., and Evansville, Ind., as compared with rates to and from intermediate or local stations, such as Bowling Green, Ky., has already been considered by this Commission a number of times, and in order to save time and space Mr. Goodwyn (Tr., pp. 431-434) referred to a number of cases in which these problems have been treated by the Commission and said that he was familiar with the general physical and geographical conditions, as well as the rate adjustments, upon which the testimony of officials of the Louisville & Nashville Railroad Company in all of these cases was based, and he made such evidence part of his testimony in this case.

The Rates to and from Bowling Green are Reasonable in and of Themselves.

Mr. C. E. Fulton testified (Tr., p. 304) that as compared with rates in similar or competing territory the rates are reasonable in

and of themselves. And Mr. D. M. Goodwyn testified (Tr., p. 382) that the average revenue earned by the L. & N. Railroad on all business into Bowling Green was 11.1 cents per hundred pounds, and the average revenue earned on outbound business by the railroad was 12.77 cents per hundred pounds. Complainant's witness, Capt. E. W. Bewley, testified (Deposition, p. 17) that a fair average rate for the boats between Bowling Green and Evansville is 15 cents per hundred pounds, and that a fair average rate for intermediate points (Deposition, p. 29) is 20 cents per hundred pounds.

Mr. Goodwyn also testified (Tr., pp. 396-397) that the class rates to Bowling Green are lower than the standard scale which applies generally between stations on the lines of the Louisville & Nashville Railroad Company, and that commodity rates established from Louisville are even lower, and that about two-thirds of the traffic are handled on commodity rates; and (Tr., pp. 397-399) that if the tonnage of freight from Louisville proper to Bowling Green proper for the month of October, 1911, which was handled on commodity rates, had been handled on class rates the revenue of
643 $1,313.14 received at the commodity rates would have been increased to $1,995.00 at class rates (an increase of $681.86, or over 50 per cent), while the total freight from Louisville proper to Bowling Green proper for the month which was handled on class rates amounted to only $701.80.

And Mr. Goodwyn testified directly (Tr., pp. 434-436) that he considered all of the rates covered by the complaint as reasonable, not only in and of themselves, but as reasonable by comparison. Mr. Goodwyn said:

"In my judgment, a reasonable rate in and of itself is one that does not impose an arbitrary and exorbitant burden upon the traffic and thereby act in restraint of trade; furthermore, it is one that does not yield to the carrier an excessive and unusual profit for either the cost or the value of the service performed. Measured by those standards, I certainly do not believe that the Bowling Green rates complained of in this cause can be considered as anything other than reasonable in and of themselves. But, further than that, I regard them as reasonable by comparison. In the first place, the class rates from Louisville to Bowling Green are made on less than the Louisville & Nashville Railroad mileage scale, which mileage scale is the general basis for the company's local rates, and I regard that mileage scale, itself, as a reasonable scale. All of the commodity rates from the Ohio River to Bowling Green are very materially less than the company's mileage scale, and they are less than the rates applied generally, not only by the L. & N. Railroad for service from similar distances, but are materially less than the rates authorized as reasonable by the different State Railroad Commissions in the South. They are less than the rates authorized by the other railroads operated in this country for similar service; those rates are made with due regard to the competitive influence of the Green and Barren rivers, and the proof that they do fairly meet the competition is evidenced by the fact that of all the business reaching Bowling Green approximately 80 per cent is handled by the Louisville & Nashville Railroad, leaving about 20 per cent to be handled by the boats. As

to the reasonableness by comparison of the outgoing rates from Bowling Green, it is probably sufficient to say that of all the business moving from Bowling Green to the Ohio River and beyond approximately 95 per cent is handled by the railroad, and about 5 per cent by the river. As to the total rates from Chicago, St. Louis, New York and other eastern points to Bowling Green, I consider them reasonable, because they are made up of combinations of reasonable rates, the factors north of the Ohio River being influenced and governed by the highly competitive conditions existing in that territory, and the factors south of the Ohio River being, as just stated, influenced by the water competition at Bowling Green, which competition has been fairly met."

The fact that the Bowling Green rates established by the railroad have had the effect of reducing the boat line rates below the rates charged by the boat to intermediate stations would seem to be in itself a demonstration that the rates charged by the railroad company are reasonably low.

644 Mr. Goodwyn also testified (Tr., pp. 440-441) that none of the rates to or from Bowling Green were, insofar as he knew, higher than the lowest combinations which can be made on Louisville, Evansville, Clarksville, Nashville or any other point; and if there are any such higher rates, he would be very glad to adjust them; and that he knows no reason why Bowling Green should receive the benefit of the competitive conditions existing at Nashville and Clarksville, except insofar as benefit may result to Bowling Green from reduction of its rates by combinations based on those points.

The Rates to and from Clarksville and Nashville are Not Lower Than Necessary.

Mr. Goodwyn said (Tr., pp. 389-390):

"I say, without any hesitation whatever, that if the Louisville & Nashville Railroad could to-day advance its rates from the Ohio River and from St. Louis to Nashville and Clarksville, Tenn., and meet the conditions that exist at those points, and be permitted by the powers above us to make such an advance, it would do it just as soon as it could get the tariffs out."

And Mr. Goodwyn further testified (Tr., pp. 436-437) that the rates to and from Nashville and Clarksville are, in his opinion, unquestionably not any lower than are necessary to meet the competitive conditions, both rail and water, existing at those points, and that if he regarded them as lower than they were necessary to be for the purpose of meeting that competition, he would be derelict in his duty to the company with which he is connected if he failed to use every effort at his command and every influence within his power to secure their advance; that he does not believe he is unmindful of his duty in that regard, and he has not undertaken to bring about any general advance in those rates; that there are some rates which he thinks are too low, and against these rates he has strongly protested, and did all he could to prevent their establishment, but that generally the rates meet the actual conditions of competition, both rail and water.

The Rates to and from Bowling Green Meet the Competition at that Point as Far as Necessary.

The fact that the rail rates to Bowling Green have been affected by adjustments made to meet water competition is apparent from complainant's own argument (brief, pp. 18-20), under the head of "The Extent to which River Transportation Has Already Affected Rates to Bowling Green." It has been shown that the present river rates are substantially the same as the rates made effective by the Steamer Sun under agreement with the merchants of Bowling Green (Tr., pp. 60, 256, 267, 377); and (Tr., p. 394) that rail rates on all commodities covered by the river tariffs have been made by adding differentials which represent a "fair difference for the rail service as compared to the river, and to cover partly the cost of the insurance by river."

645 It has been further shown (Tr., p. 396) that the rates made by the railroad enable it to handle approximately 80 per cent of the traffic into Bowling Green and approximately 95 per cent of the outbound traffic. And Mr. Goodwyn testified (Tr., p. 438) that the rates to and from Bowling Green unquestionably meet, as far as may be necessary or proper, the competitive conditions which exist at that point. And it appears (Tr., p. 377) that the rail competition at Bowling Green has resulted in the boat line making lower rates from Evansville to Bowling Green than are made to intermediate landings.

Alleged Control of the Transportation on the Green and Barren Rivers by the Louisville & Nashville Railroad Co.

The flimsiness and absurdity of the claim that the Louisville & Nashville Railroad Company controls the transportation on the Green and Barren rivers is shown by complainant's own arguments. Complainant (brief, pp. 11 and 12) goes to great pains to show that a free and unobstructed river is now maintained by the United States Government, and that a perpetually free wharf and good macadam road are maintained by the City of Bowling Green and County of Warren. As the free river and the free wharf are there, it would be absurd to say that the Louisville & Nashville Railroad Company controls the transportation in the Green and Barren rivers, even if the Louisville & Nashville Railroad Company owned the Evansville & Bowling Green Packet Company lock, stock and barrel, and it has been shown that the Louisville & Nashville Railroad Company has not one dollar of interest in the packet line.

Complainant's arguments (brief, pp. 18-20) as to the extent to which river transportation has already affected rates to Bowling Green shows that wherever the traffic officers of the Louisville & Nashville Railroad Company have deemed it proper or necessary to meet the river competition they have done so by lowering the rail rates, and not by securing an increase in the rates by water.

Even if this Commission should accept as admissible the rank hearsay and gossip testified to by R. C. Duncan, upon recall, and referred to by complainant (brief pp. 14 and 15), it is apparent from Mr. Duncan's own admission (Tr., p. 327) that the alleged conversation had reference merely to the fight against the Sun, and

did not have any reference to a continuing agreement or guarantee. Mr. Goodwyn stated very frankly that in the fight with the Steamer Sun the Louisville & Nashville cut its own intrastate rates. If we give complainant's gossip all of the value of admissible and credible testimony; if we should ignore the fact that according to the testimony of Capt. Bewley (complainant's own witness), the interest of the Packet Company in traffic other than that of Bowling Green is nine times as great as the interest in the Bowling Green traffic; if we assume that the Louisville & Nashville Railroad Company did actually pay the Evansville & Bowling Green Packet Company to drive the Sun out of the river; if, in fact, we suppose that to be true,
646 which has been shown not to be true, that the Louisville & Nashville Railroad Company then owned and controlled the Packet Company and itself cut the rates, nevertheless there is nothing to show that the Louisville & Nashville Railroad Company in any way controls the present rates on the river, or that there is any agreement for maintaining rates. All of the evidence in the record shows, to the contrary, that there is competition between the boat line and the railroad, and that the railroad meets the water competition as far as it is necessary so to do. Even if the Louisville & Nashville Railroad Company now owned the boats (which it does not), such fact would not justify the claim of complainant that the Louisville & Nashville Railroad controls transportation in the Green and Barren rivers, which complainant has been to such pains to show have been made free rivers by the Government, with a free wharf and macadam road afforded by the City of Bowling Green and County of Warren. If the Louisville & Nashville Railroad Company had even, by cutting its rates, both interstate and intrastate, on traffic with which it competed with the Sun, been able to drive the Sun out of the river, and had done so, that fact would not justify the claim that the Louisville & Nashville Railroad Company controlled the transportation on the Green and Barren rivers. And while, under the fourth section of the Act to Regulate Commerce as amended June 18, 1910, it is provided (if the provision is constitutional) that whenever a carrier by railroad shall, in competition with a water route, or routes, reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless, after hearing by the Interstate Commerce Commission, it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition, that provision is not retroactive, and can not be availed of by complainant in this proceeding with respect to any competition with the Steamer Sun in the year 1901.

With all the gossip and hearsay introduced by complainant, it is apparent from the record that the rates now in effect by the Evansville & Bowling Green Packet Company are substantially the rates of the Steamer Sun put in by the merchants of Bowling Green themselves, and that those rates were not raised even after the agreement made by the packet company to maintain such rates expired in 1906.

In some unknown way, complainant (p. 14 of brief) fixes the year 1893 as the date by which the Louisville & Nashville Railroad Company undertook the control of the traffic on the river. According to complainant's own argument, therefore, the period of *of* fifty-two

years from the time when the locks and dams were completed by the State of Kentucky were years of normal competition, free from any control of the railroad company, and it has been shown that that period of competition was absolutely without result upon the railroad rates. The only effect upon railroad rates referred to by complainant in its argument as to the extent to which river transportation has already affected rates to Bowling Green (brief, pp. 18-20), and the only effect of the Green and Barren Rivers competition shown in the entire record in this case, relates to the
647 period subsequent to 1893, when the L. & N. Railroad Company is alleged to have obtained control of the river. The reduction in the rate on sugar from New Orleans occurred subsequent to 1893, and the testimony of Mr. Goodwyn, hereinabove referred to, shows that all of the commodity rates from Louisville to Bowling Green are adjusted with relation to the rates of the Evansville & Bowling Green Packet Company, which rates are the reduced rates of the Steamer Sun, put in effect in 1901.

Whatever force there may be in the inference of L. & N. control to be drawn from the fact that Capt. Lee Howell, who is division general freight agent of the Louisville & Nashville Railroad Company at Evansville, is also a stockholder and president of the Evansville & Bowling Green Packet Company, is directly met and overcome by the facts testified to by Mr. Goodwyn (Tr., pp. 463-465) that the Louisville & Nashville Railroad Company owns no part of the Evansville & Bowling Green Packet Company; that the Louisville & Nashville Railroad Company had nothing whatever to do with the making of rates from Evansville to Bowling Green which were agreed to by the Evansville & Bowling Green Packet Company and the representatives of the citizens of Bowling Green, and that the Louisville & Nashville Railroad Company fixed its own differentials over the Evansville rate without any conference with any representative of the packet company.

PART III.

Argument.

The Issues as Narrowed by Complainant's Brief.

In the testimony introduced by defendants, and in the abstracts of the evidence and the comments thereon which we have given in Part II of this brief, we have covered all of the multifarious contentions raised in the pleadings or suggested in complainant's brief. We have shown the differences in the general relative situation as to competition and transportation facilities at Bowling Green, Ky., Nashville and Clarksville, Tenn., Louisville, Ky., and Evansville, Ind.; we have compared Bowling Green with Nashville and with Clarksville generally, and as to water, rail and market competition; we have similarly compared Bowling Green with Evansville and with Louisville; we have specifically explained the rates from Ohio River crossings, on commodities outbound, from Chicago, etc., from the east, New York, etc., from St. Louis, on commodities shown in Paragraph IX of the complaint, on sugar from New Orleans, on eggs and dressed poultry to New York and tobacco to Cincinnati, Evansville,

Louisville and Memphis, on oranges from Jacksonville, Fla., on cattle and hogs to Chicago, Ill.; we have explained the proportional rates applicable on business from Chicago to Southeastern or Green Line territory; we have discussed the rates southbound to Atlanta, Ga., Montgomery, Ala., and Jackson, Miss.; we have replied to the
648 absurd allegations which complainant has made in its brief as to the control of the transportation on the Green and Barren Rivers by the Louisville & Nashville Railroad Company; and we have shown that the same problems raised in this proceeding have been previously considered by this Commission, and the lower rates to competitive points, such as Nashville and Louisville, have been justified. But we would draw attention of the Commission to the fact that complainant, in pages 41 to 46, inclusive, of its brief, narrows the issues to a consideration of the inbound rates to Bowling Green, of which the rates from New York are taken as typical, and a consideration of the outbound rates, represented by the rates to Atlanta, Ga., Montgomery, Ala., and Jackson, Miss. And with reference to the rates "north of the river," or the proportional rates applicable on business from Chicago to the southeast, complainant says (brief, p. 42):

"The rates from Chicago and the West to points in Southeastern territory are made with relation to the rates from the East, and therefore we think it sufficient to establish our case with reference to the rates from New York to Bowling Green, and allow the rates from Chicago and St. Louis to Bowling Green to be adjusted in relation thereto, just as is done at various other southern points."

We therefore respectfully refer the Commission to the abstract of the evidence and comments thereon, which are shown in Part II of this brief, for a discussion of all the subordinate issues raised by complainant, and, for the sake of brevity, we shall limit the further discussion of this case to the differences in inbound and outbound rates as illustrated by the rates from New York and to Atlanta, Ga., Montgomery, Ala., and Jackson, Miss., which have been taken by complainant as typical.

With respect to the rates, both inbound and outbound, the main issue is, of course (as indicated by us in Part I of this brief), as to whether or not the circumstances and conditions which surround the transportation of traffic to and from the city of Bowling Green, Ky., are substantially similar to the circumstances and conditions which surround the transportation of traffic to and from the cities of Clarksville and Nashville, Tenn., Evansville, Ind., and Louisville, Ky. We believe that our discussion of the evidence in Part II of this brief has conclusively demonstrated that the circumstances and conditions at Bowling Green are substantially different from those which exist at Clarksville, at Nashville, at Evansville and at Louisville. The issue is, of course, largely one of fact, and has been largely covered by the comments on the facts. Our further argument will consist principally in the summing up of those facts as to competition by water, competition of carriers, and market competition, as to the reasonableness of the rates per se, and as to the necessary effect of competition at all of the points involved.

649 There is Water Competition at Louisville, Ky., Evansville, Ind., and Nashville and Clarksville, Tenn., Which Does Not Exist at Bowling Green, Ky.

The abstract of the evidence which we have given shows that there has never been, and is not now, any substantial or controlling competition at Bowling Green resulting from the Green and Barren River Line of Transportation; while, on the contrary, from the beginning of the railroads the Cumberland and Ohio rivers have affected the rail rates. The Cumberland and Ohio rivers have actively affected the rates in the past, and are of potential and controlling effect at this time. There is, therefore, to be found in the differences in water competition at Bowling Green, Nashville, Clarksville, Louisville and Evansville a substantial and controlling difference in the circumstances and conditions of transportation and competition which exist at those points.

There is at Louisville, Ky., Evansville, Ind., and Nashville and Clarksville, Tenn., Competition of Carrier with Carrier, Intensified by Market Competition, and there is No Such Competition at Bowling Green, Ky.

There is, of course, no rail competition at Bowling Green, Ky. With respect to the inbound rates (applying, on the one hand, via the Ohio River crossings and via lines passing through the northern gaps of the Appalachian barrier, and, on the other hand, applying via South Atlantic ports, or made by rail lines passings through the southern gaps of the Appalachian system), we have shown that the rail competition at Louisville, Evansville, Clarksville and Nashville is actual and controlling, and is intensified by market competition; and we have similarly shown that, with respect to southbound rates, different available rail routes make gateway rates, or rail competitive rates, at Louisville, Evansville, Nashville and Clarksville, and it is admitted by complainant that southbound rates are affected by market competition. This market competition, of course, intensifies rail competition where rail competition exists. That rail competition exists at Louisville, Evansville, Nashville and Clarksville, and does not exist at Bowling Green, seems too plain to require proof, but it has, nevertheless, been proved. And this difference in competition between carriers, intensified by market competition, is another material and controlling difference in circumstances and conditions of transportation and competition which exist at Bowling Green as compared with the circumstances and conditions at Louisville, Evansville, Nashville and Clarksville.

650 The Rates Complained of are Reasonable in and of Themselves, and the Louisville, Evansville, Nashville and Clarksville Rates are Not Lower than it is Necessary that they Should be in Order to Meet the Competition Which Exists at Those Points.

We have shown affirmatively that the rates complained of, and all rates into and out of Bowling Green, are reasonable in and of themselves, and that no discrimination exists by reason of the lower

rates to or from Louisville, Evansville, Nashville and Clarksville, because these rates are no lower than it is necessary that they should be in order to meet the competition which exists at those points.

The Bowling Green Rates Meet the Competition Which Exists at that Point as Far as it is Necessary so to Do.

Complainant throughout has proceeded upon the assumption that if water competition existed at Bowling Green, the rail carriers could be compelled by this Commission to meet that water competition. In this assumption complainant is in error. In the case of Bainbridge Board of Trade v. Louisville, Henderson & St. Louis R'y Co., et al., 15 I. C. R. 586, decided April 5, 1909, Commissioner Clark, in delivering the report of the Commission, said (p. 594):

"The Atlantic Coast Line insists that its rates into Bainbridge have been sufficient to meet any water competition on the Flint River. There may be water competition at each of two points, and yet a difference in rate to those points may be justified. The carriers can not be compelled, as a matter of law, to meet water competition. They do it of their own volition, or whenever the same is potent enough to compel them to do so in order to secure the traffic. In each instance the carrier determines for itself whether such water competition has sufficient influence on the traffic to make it reduce its rates."

Complainant's own argument admits that for many years (even prior to the alleged control of the river by the Louisville & Nashville Railroad Company) the water competition of the Green and Barren rivers was without substantial force or effect, and defendants have affirmatively shown that whatever competition exists has been adequately met by the rail carriers.

Conclusion.

In conclusion, we have shown that Bowling Green differs from Louisville, Evansville, Nashville and Clarksville:

(*a*) With respect to the circumstances and conditions of transportation which arise from water competition; and

(*b*) With respect to the circumstances and conditions of transportation which arise from competition of carrier with carrier, intensified by market competition;

651 and we have shown that the rates complained of are reasonable in and of themselves, and that the lower rates to the competitive points are not lower than it is necessary that they should be in order to meet the competition which exists at those points, and that the Bowling Green rates meet the competition which exist at that point as far as it is necessary so to do; and therefore it follows that this complaint should be dismissed.

Respectfully submitted,

W. A. COLSTON,
D. P. CONNELL,
Attorneys for Defendants as of Record.

ALBERT S. BRANDEIS,
Of Counsel.

LOUISVILLE & NASHVILLE EXHIBIT No. 2.

Statement Showing Present Rates, in Cents per 100 lbs., on Classes 1 to F, Inclusive, from Nashville, Tenn., to Louisville, Ky., and Clarksville, Tenn., to Louisville, Ky., as Compared with the Highest Rates from Nashville and Clarksville, Respectively, to Intermediate Points.

		Classes.													
From Nashville, Tenn., to	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F	Tariff authority.
Louisville, Ky.	187	28	24	21	18	16	15	12	12	10	9	12	15	20	L. & N. R. R. G. F. O. 1531, I. C. C. No. A-11514.
Cave City, Ky.	102	55	47	42	37	32	30	30	30	20	15	30	30	40	Nashville Local Tariff No.1, I. C. C. No. A-11500.
Difference	...	27	23	21	19	16	15	18	18	10	6	18	15	20	
From Clarksville, Tenn., to Louisville, Ky.	178	41	36	31	26	21	18	18	18	14	13	18	21	26	L. & N. R. R. G. F. O. No. 1531, I. C. C. No. A-11514.
Rowletts, Ky.	103	56	48	43	38	33	31	31	31	20	15	31	31	40	Memphis Line Local No. 1, I. C. C. No. A-9411.
Difference	...	15	12	12	12	12	13	13	13	6	2	13	10	14	

L. & N. R. R. General Freight Office, Louisville, Ky., May 2, 1912.

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LOUISVILLE & NASHVILLE EXHIBIT No. 3.

Statement Showing Present Rates on Classes 1 to F, Inclusive, from Louisville, Ky., to Clarksville, Tenn., and from Louisville, Ky., to Nashville, Tenn., as Compared with the Highest Rates from Louisville to Intermediate Points.

	Distance, miles.	Classes.													Tariff authority.
		1	2	3	4	5	6	A	B	C	D	E	H	F	
From Louisville, Ky., to Clarksville, Tenn.	178	38	33	28	23	18	15	15	18	11	10	15	21	20	Washburn's Southeastern Tariff No. 7, I. C. C. No. 78.
Smith's Grove, Ky.	100	55	47	42	37	32	30	30	30	20	15	30	30	40	L. & N. Louisville Local Tariff No. 1, I. C. C. No. A-11282.
Difference	...	17	14	14	14	14	15	15	12	9	5	15	9	20	
From Louisville, Ky., to Nashville, Tenn.	187	38	33	28	23	18	15	15	18	11	10	15	21	20	Washburn's Southeastern Tariff No. 7, I. C. C. No. 78.
Smith's Grove, Ky.	100	55	47	42	37	32	30	30	30	20	15	30	30	40	L. & N. Louisville Local Tariff No. 1, I. C. C. No. A-11282.
Difference	...	17	14	14	14	14	15	15	12	9	5	15	9	20	

L. & N. R. R. General Freight Office. Louisville, Ky., May 2, 1912.

LOUISVILLE & NASHVILLE EXHIBIT No. 4.

Statement Showing Lowest Rates on Classes 1 to F, Inclusive, Between Nashville, Tenn., and Louisville, Ky., and Between Clarksville, Tenn., and Louisville, Ky., as Compared with the Highest Rates Applying Between Intermediate Points.

	Distance, miles.	Classes. 1	2	3	4	5	6	A	B	C	D	E	H	F	Tariff authority.
Lowest rates between Nashville and Louisville (*i. e.* from Nashville to Louisville)	187	28	24	21	18	16	15	12	12	10	9	12	15	20	L. & N. G. F. O. 1531, I. C. C. No. A-11514.
Highest rates between intermediate points (*i. e.* from Smith's Grove, Ky., to Hoertz, Ky.)	92	55	47	42	37	32	30	30	30	20	15	30	30	40	L. & N. Main Stem Local No. 1, I. C. C. No. A-9575.
Difference	...	27	23	21	19	16	15	18	18	10	6	18	15	20	
Lowest rates between Clarksville and Louisville (*i. e.*, from Louisville to Clarksville)	178	38	33	28	23	18	15	15	18	11	10	15	21	20	Washburn's Southeastern Tariff No. 7, I. C. C. No. 78.
Highest rates between intermediate points (*i. e.*, Division Number 20 Rates)	99	56	48	43	38	33	31	31	31	20	15	31	31	40	L. & N. Memphis Line Local Tariff No. 1, I. C. C. C. No. A-9411.
Difference	...	18	15	15	15	15	16	16	13	9	5	16	10	20	

L. & N. R. R. General Freight Office, Louisville, Ky., May 2, 1912.

LOUISVILLE & NASHVILLE EXHIBIT No. 5.

Louisville & Nashville Railroad Company. Office of General Freight Agent.

SCALE OF RATES.—Explanation: Division numbers shown in this tariff are to be applied to this scale of rates.

L to N 187. L to C 177. **TABLE A.**

	Division numbers.	In cents per hundred pounds.														In carloads.					
														Per bbl.	Per 100 lbs.	In cents per 100 lbs.			Per ton 2,000 lbs.	In dollars per car.	
		1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N	Coal and coke.	Live stock, except hogs.	Hogs, single deck. Sheep, double deck.
10 miles and less	1	12	10	9	8	7	6	6	6	5	5	6	6	10	6	5	4	3	60	5 00	6 00
Over 10 and not over 15	2	15	13	12	11	10	9	9	9	6	6	9	9	12	9	6	5	4	70	6 00	7 00
" 15 " " 20	3	20	17	15	13	12	11	11	11	7	7	11	11	14	11	7	6	5	90	7 00	8 00
" 20 " " 25	4	23	20	17	15	14	13	13	13	9	8	13	13	18	13	9	7	5	1 00	8 00	10 00
" 25 " " 30	5	26	23	20	17	16	15	15	15	10	8	15	15	20	15	10	7	6	1 05	10 00	12 00
" 30 " " 35	6	29	25	22	19	18	17	17	17	11	9	17	17	22	17	11	8	6	1 15	12 00	14 00
" 35 " " 40	7	32	27	24	21	20	19	19	19	12	9	19	19	24	19	12	8	6	1 20	14 00	17 00
" 40 " " 45	8	35	30	27	23	22	21	21	21	13	10	21	21	26	21	13	8	7	1 25	15 00	18 00
" 45 " " 50	9	37	32	28	25	24	22	22	22	14	10	22	22	28	22	14	9	7	1 25	16 00	19 00
" 50 " " 55	10	39	34	30	26	25	23	23	23	15	11	23	23	30	23	15	10	7	1 30	18 00	22 00
" 55 " " 60	11	41	35	31	28	26	24	24	24	16	11	24	24	32	24	16	12	8	1 35	20 00	24 00
" 60 " " 65	12	43	37	33	30	27	25	25	25	17	12	25	25	34	25	17	12	8	1 40	22 00	26 00
" 65 " " 70	13	45	39	34	31	28	26	26	26	17	12	26	26	34	25	17	13	8	1 45	23 00	28 00
" 70 " " 75	14	47	41	36	32	29	27	27	27	18	13	27	27	36	25	18	13	9	1 50	24 00	29 00

| | | |

LOUISVILLE & NASHVILLE EXHIBIT No. 6.

Statement Showing Distance and Total of the Present First Six Class Rates from Louisville, Ky., to L. & N. R. R. Stations—South Park, Ky., to Veto, Ala., Incl., Shown Below, Compared with Total of the First Six Class Rates per L. & N. R. R. Table "A" for the Distance, and Percentage Present Rates of L. & N. R. R. Table "A."

From Louisville, Ky., to	Distance.	Total first six classes.		Percentage present rates of table A.	Tariff authority for present rates.
		Present rates.	L. & N.R.R. table A.		
South Park, Ky	10	52	52	100	L. & N. R. R. I. C. C. No. A-11282
Hubers, "	15	70	70	100	" " " "
Bardstown Jct., "	22	102	102	100	" " " "
Lebanon Jct., "	50	117	117	100	" " " "
Tunnel Hill, "	39	133	143	93	" " " "
Elizabethtown, "	42	135	158	85.4	" " " "
Glendale, "	50	158	168	94	" " " "
Upton, "	59	177	185	95.6	" " " "
Munfordville, "	73	212	212	100	" " " "
Horse Cave, "	81	219	228	95.6	" " " "
Cave City, "	85	228	228	100	" " " "
Rocky Hill, "	96	239	243	98.3	" " " "
Smith's Grove, "	100	243	243	100	" " " "
Bristow, "	109	243	249	97.6	" " " "
Bowling Green, "	114	243	257	94.6	" " A-11547
Woodburn, "	125	243	268	90.6	" " A-11282
Salmon, "	130	243	268	90.6	" " " "
Franklin, "	134	243	275	88.3	" " " "
Mitchellville, Tenn	141	243	287	84.7	" " " "
Buck Lodge, "	149	243	287	84.7	" " " "
Gallatin, "	159	243	295	82.5	" " " "
Avondale, "	167	236	306	77.1	" " " "
Hendersonville, "	171	225	313	71.9	" " " "
Edenwold, "	175	207	313	66.1	" " " "
Maplewood, "	180	207	313	66.1	" " " "
Nashville, "	187	155	321	48.3	Washburn's I. C. C. No. 78.

(See follows Map 657 marked 1 & 2)

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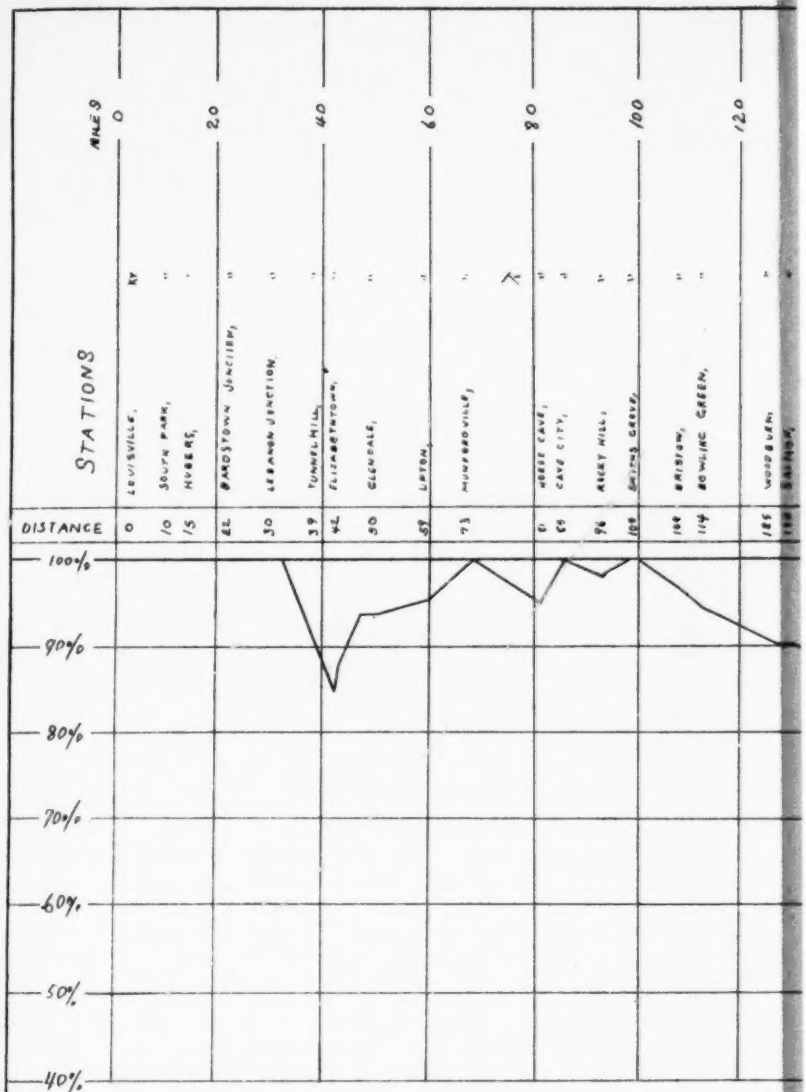

Chart showing relation of present first six classes from Louisville Ky., to L.&N.R.R. stations shown above (South Park Ky., to Velo Ala., inclusive) to L.&N.R.R. Table A rates for the distance. Table A is represented by straight line (100%)

658

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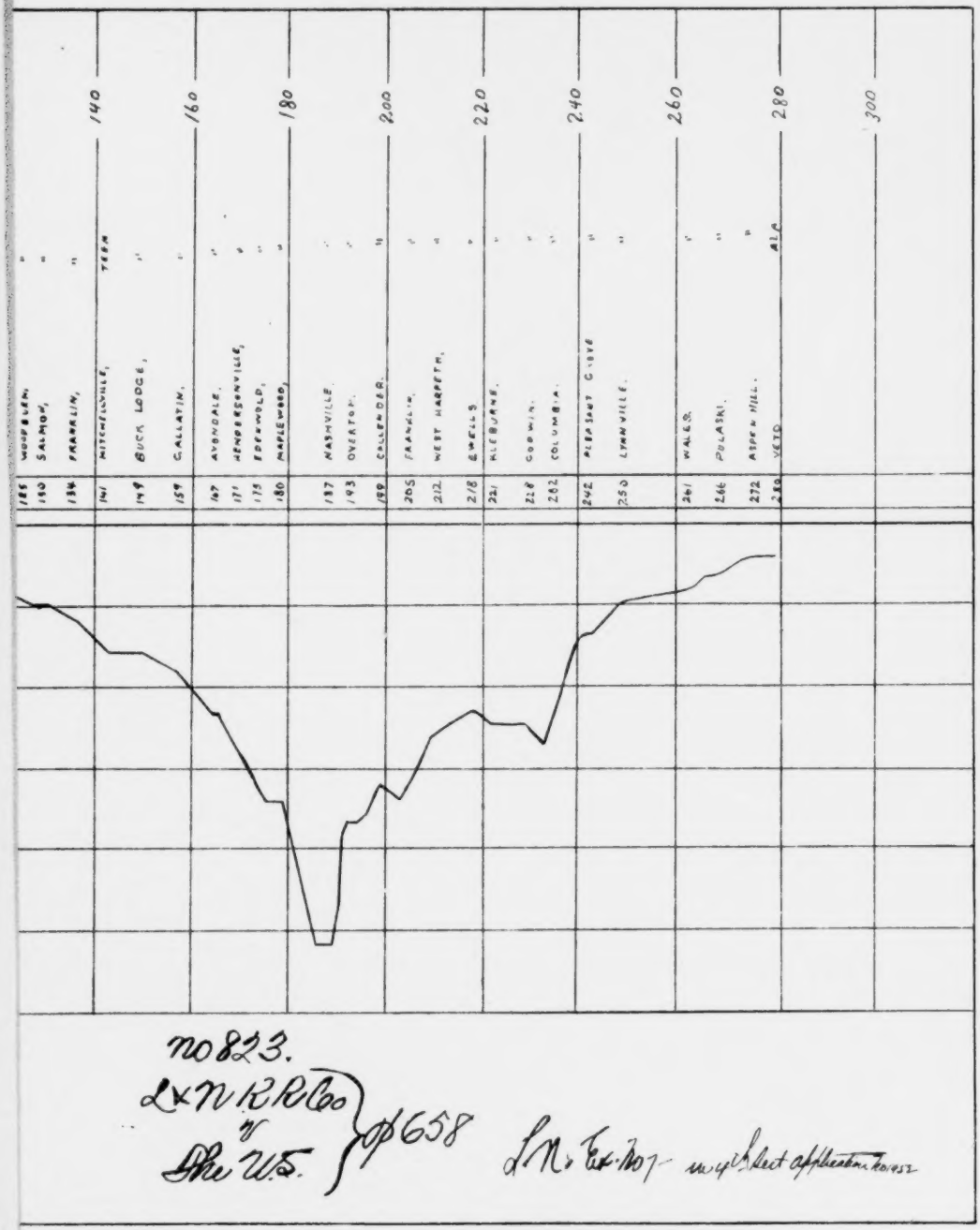
Louisville & Nashville Exhibit No. 7.



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L & N R R Co
v.
The U.S.
} p 658

L. N. Ex. 107 - weighted application rates

Louisville & Nashville Exhibit No. 6.

Statement Showing Distance and Total at the Present First Six Class Rates from Louisville Ky. to L. & N. R. R. Stations South

Overton,	"	193	207	329	63	L. & N. R. R. I. C. C. No. A-11282
Callender,	"	199	224	329	68	" " " "
Franklin,	"	205	224	336	66.7	" " " "
West Harpeth,	"	212	257	344	74.7	" " " "
Ewells,	"	218	266	344	77.3	" " " "
Kleburne,	"	221	266	352	75.6	" " " "
Godwin,	"	228	266	352	75.6	" " " "
Columbia,	"	232	266	360	73.9	" " " "
Pleasant Grove,	"	242	317	367	86.4	" " " "

From Louisville, Ky., to		Distance.	Total first six classes. Present rates.	Total first six classes. L. & N.R.R. table A.	Percentage present rates of table A.	Tariff authority for present rates.
Lynnville,	Tenn	250	333	367	90.7	L. & N. R. R. I. C. C. No. A-11282
Wales,	"	261	349	377	92.5	" " " "
Pulaski,	"	266	357	377	94.7	" " " "
Aspen Hill,	"	272	364	377	96.6	" " " "
Veto,	Ala	280	374	386	96.9	" " " "

Finis.

(Here follows chart marked L. & N.'s Exhibit No. 7, page 836.)

LOUISVILLE & NASHVILLE EXHIBIT No. 8.

Statement Showing Distance and Total of the Present Rates on the Following Commodities, viz., Apples, Green, in Bbls., L. C. L.; Canned Goods, C. L. and L. C. L.; Cheese, in Boxes, any Quantity; Drugs; Dry Goods, Groceries; Hardware, and Farm Wagons, K. D., L. C. L., from Louisville, Ky., to L. & N. R. R. Stations, South Park, Ky., to Veto, Ala., Incl., Shown Below Compared with Total of Rates on Aforesaid Commodities per L. & N. R. R. Table A for the Distance, and Percentage Present Rates of L. & N. R. R. Table A.

From Louisville, Ky., to		Distance.	Totals. Present rates.	Totals. Table A.	Percentage present rates of table A.	Tariff authority, present rates.
South Park,	Ky	10	83	83	100	L. & N. R. R. I. C. C. No. A-11282
Hubers,	"	15	110	110	100	" " " " "
Bardstown Jct.,	"	22	162	162	100	" " " " "
Lebanon Jct.,	"	30	186	186	100	" " " " "
Tunnel Hill,	"	39	214	226	94.7	" " " " "
Elizabethtown,	"	42	216	250	86.4	" " " " "
Glendale,	"	50	250	265	94.3	" " " " "
Upton,	"	59	277	292	94.9	" " " " "
Munfordville,	"	73	329	336	97.9	" " " " "
Horse Cave,	"	81	339	362	93.6	" " " " "
Cave City,	"	85	353	362	97.5	" " " " "
Rocky Hill,	"	96	380	387	98.2	" " " " "
Smith's Grove,	"	100	387	387	100.0	" " " " "
Bristow,	"	109	387	396	97.7	" " " " "
Bowling Green,	"	114	241.5	409	59.0	" " A-11547
Woodburn,	"	125	387	426	90.8	" " A-11282
Salmon,	"	130	387	426	90.8	" " " "
Franklin,	"	134	387	437	88.6	" " " " "
Mitchellville,	Tenn	141	387	455	85.1	" " " " "
Buck Lodge,	"	149	387	455	85.1	" " " " "
Gallatin,	"	159	387	468	82.7	" " " " "
Avondale,	"	167	380	485	78.4	" " " " "
Hendersonville,	"	171	364	496	73.4	" " " " "
Edenwold,	"	175	337	496	67.9	" " " " "
Maplewood,	"	180	337	496	67.9	" " " " "
Nashville,	"	187	252	509	49.5	Agt. Washburn's I. C. C. No. 78.

660

(New follows map and is lettered)

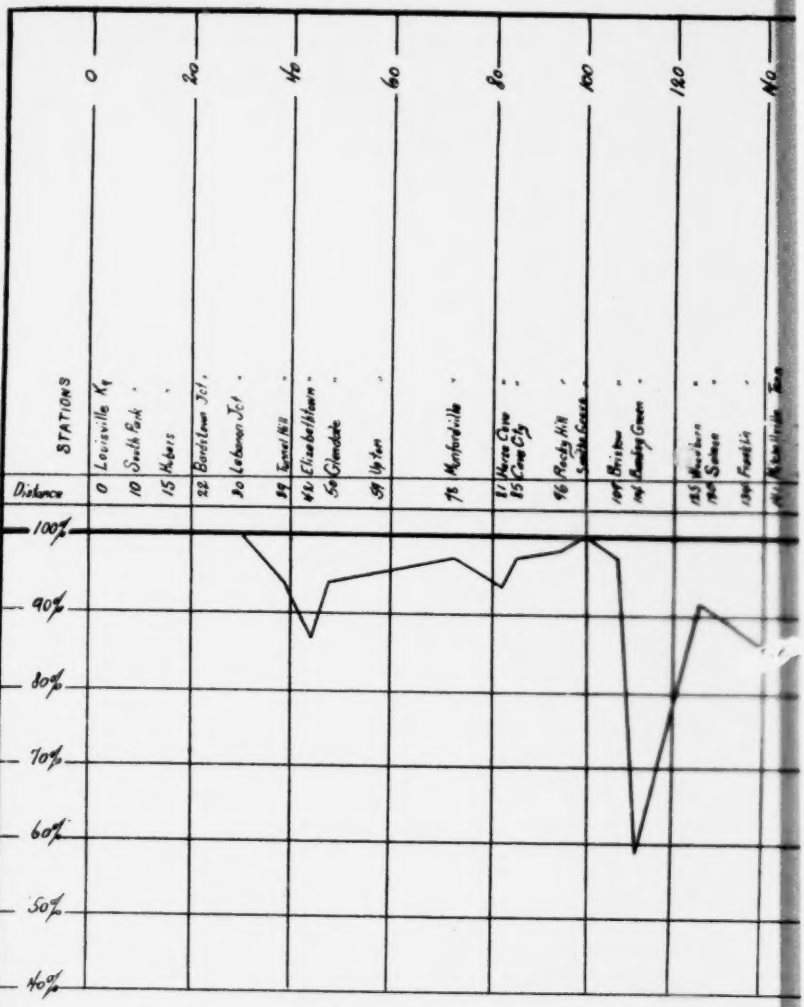
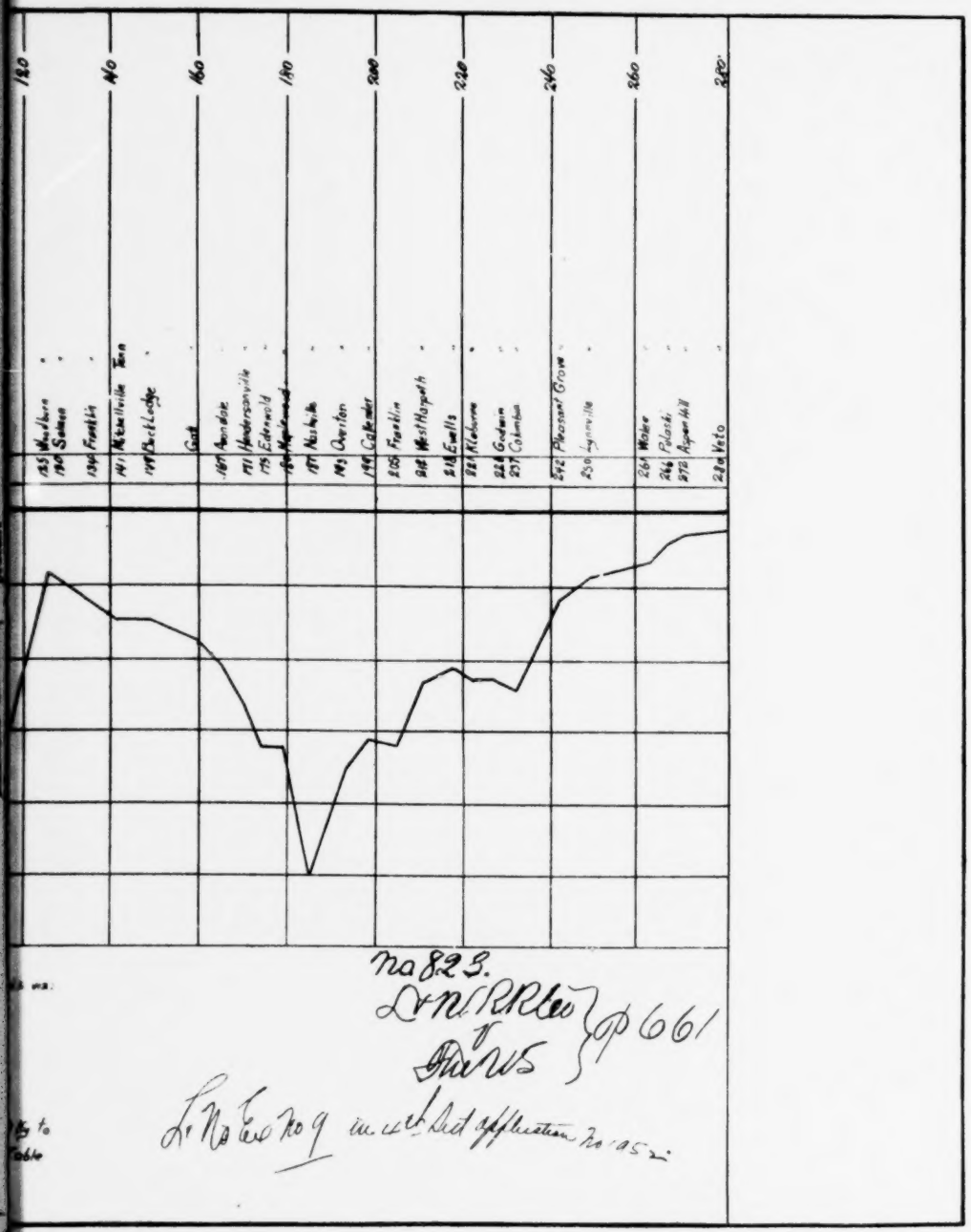


Chart showing relation of present rates on the following commodities viz:

Apples, green, in barrels L.C.L.	Drugs
Canned Goods, C.L. and L.C.L.	Groceries L.C.L.
Cheese, in boxes, any quantity	Hardware L.C.L.
Dry Goods	Wagons, Iron, K.D. L.C.L.

from Louisville Ky, to L&N R.R. stations shown above (South Park Ky to Vela Ala., inclusive) to L&NRR. Table A rates for the distance. Table A is represented by straight line (100%)



na 823.
L & N R R Co } p 661
Davis

L. & N. R. R. Co. No 9 in case of Petition for writ of

"	.....	103	337	522	64.6	L & N. R. R. I. C. C. No. A-11282
"	.....	190	362	522	69.8	" " " "
"	.....	205	362	533	67.6	" " " "
"	.....	212	416	546	76.2	" " " "
"	.....	218	428	546	78.4	" " " "
"	.....	221	428	559	76.6	" " " "
"	.....	228	428	559	76.6	" " " "
"	.....	232	428	572	74.5	" " " "
"	.....	242	509	583	87.3	" " " "
"	.....	250	530	583	90.9	" " " "
"	.....	261	556	600	92.7	" " " "
"	.....	266	569	600	94.8	" " " "
"	.....	272	580	600	96.7	" " " "
"	.....	280	597	615	97.1	" " " "

Overton,
Callender,
Franklin,
West Harpeth,
Ewells,
Kleburne,
Godwin,
Columbia,
Pleasant Grove,
Lynnville,
Wales,
Pulaski,
Aspen Hill,
Veto, Ala.

(Here follows chart marked L. & N.'s Exhibit No. 9, page 838.)

663 (Hen following map Railroad Co. et al)

LOUISVILLE & NASHVILLE EXHIBIT No. 10.

Statement Showing Distances and Total of the Present First Six Class Rates from Nashville, Tenn., to L. & N. R. R. Stations, Maplewood, Tenn., to Verona, Ky., Incl., Shown Below Compared with Total of the First Six Class Rates per L. & N. R. R Table A for the Distance, and Percentage Present Rates of L. & N. R. R. Table A.

From Nashville, Tenn., to	Distance.	Totals.		Percentage present rates of table A.	Tariff authority for present rates.
		Present rates.	Table A.		
Maplewood, Tenn	7	52	52	100	L. & N. R. R. I. C. C. No. A-11500
Edenwold, "	12	52	70	74.3	" " " "
Avondale, "	20	88	88	100	" " " "
Gallatin, "	28	117	117	100	" " " "
Fountain Head, "	40	143	143	100	" " " "
Mitchellville, "	46	158	168	94	" " " "
Franklin, Ky	53	177	177	100	" " " "
Woodlawn, "	62	185	192	94.9	" " " "
Memphis Jct., "	69	203	203	100	" " " "
Bowling Green, "	73	208	212	95.8	" " A-11547
Sunny Side, "	81	228	228	100	" " A-11500
Rocky Hill, "	91	235	239	98.3	" " " "
Cave City, "	102	243	249	97.6	" " " "
Rowletts, "	112	243	257	96.1	" " " "
Bonnieville, "	121	243	268	90.7	" " " "
Sonora, "	132	243	275	88.4	" " " "
Glendale, "	137	243	275	88.4	" " " "
Elizabethtown, "	145	243	287	84.7	" " A-10556
Lebanon Jct., "	157	239	295	81	" " A-11500
Bardstown Jct., "	165	227	306	74.1	" " " "
Hubers, "	172	192	313	61.3	" " " "
South Park, "	177	174	313	55.6	" " " "
Louisville, "	187	122	321	38	" " A-11514
St. Matthews, "	192	174	329	52.9	" " A-11500
Anchorage, "	199	192	329	58.4	" " " "

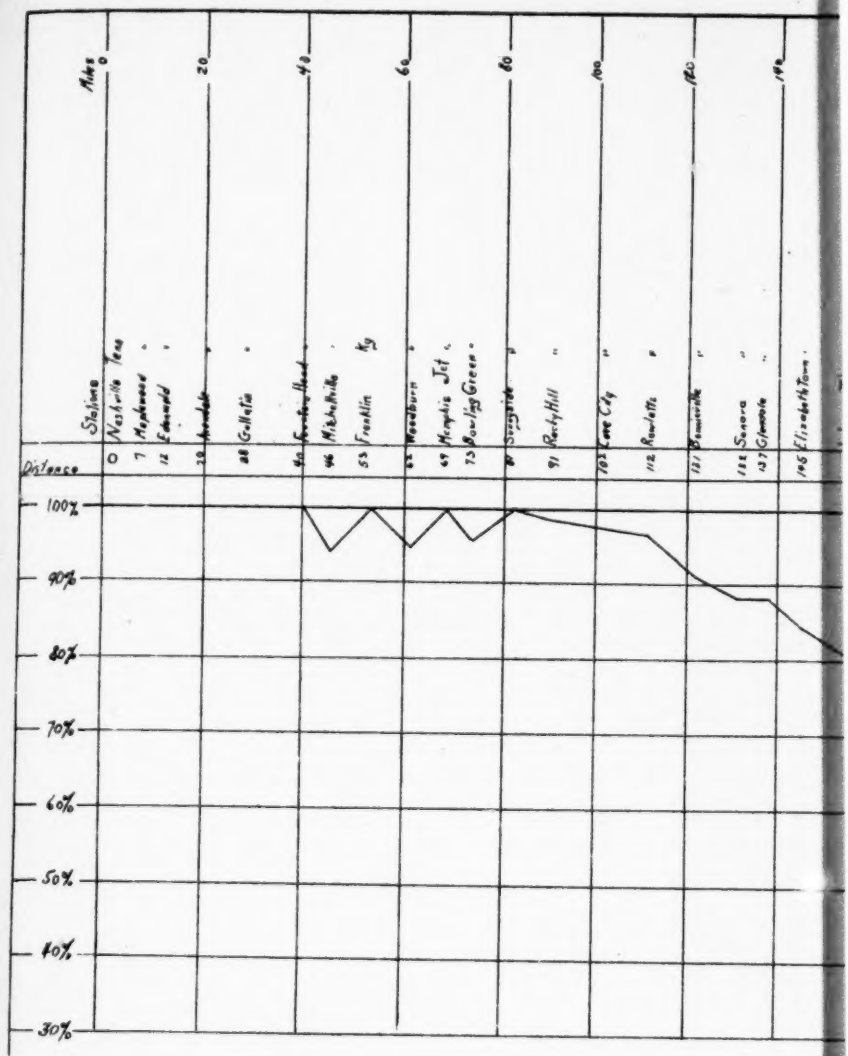
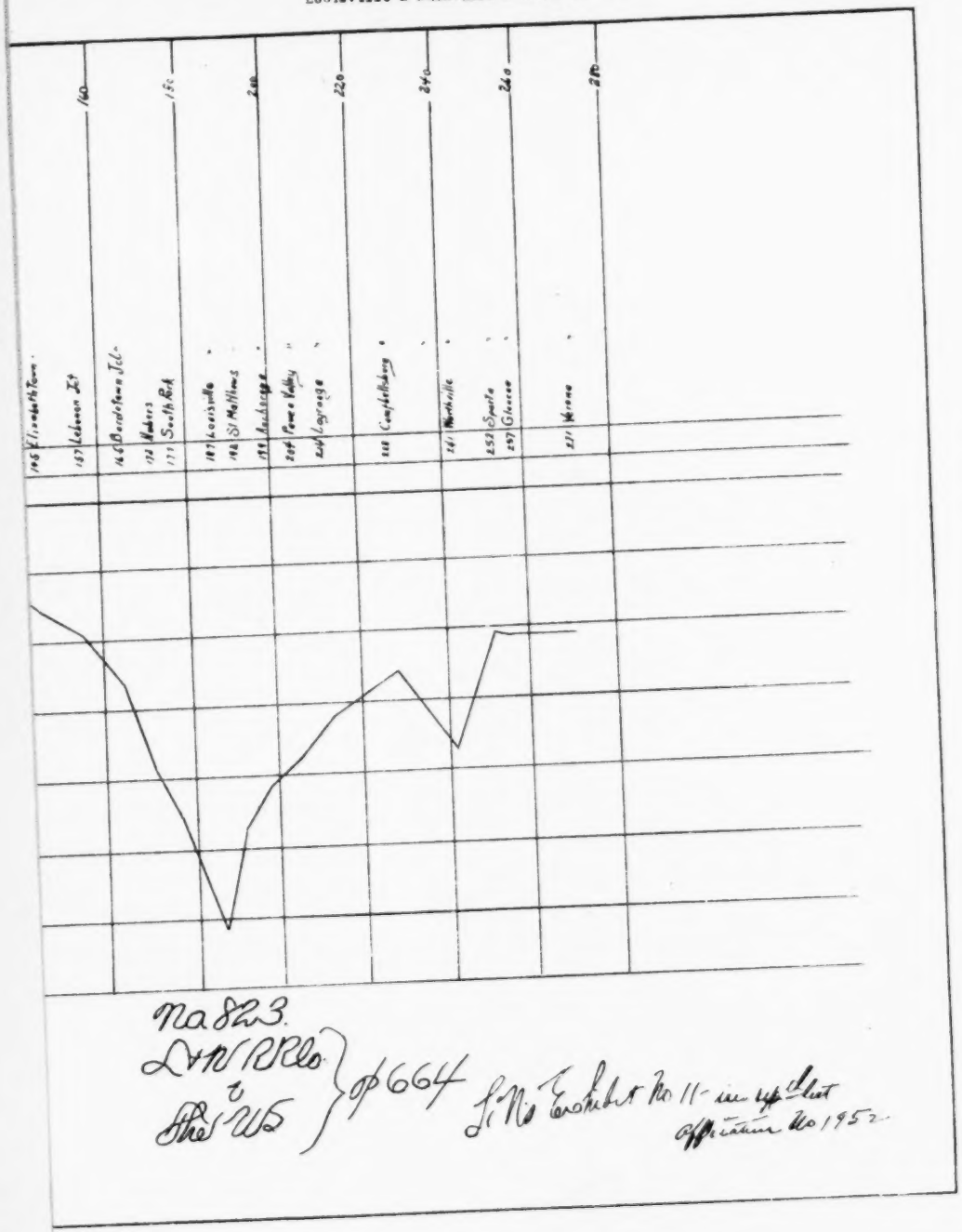


Chart showing relation of present first six classes from Nashville Tenn to L & N R.R. stations shown above (Maplewood Tenn to V. rone Ky inclusive) to L. & N. R.R. Table A rates for the distance. Table A is represented by straight line (100%)



Louisville & Nashville Exhibit No. 8

Na 823.
L & N R R Co.
vs
The U S
} p 664

L & N Exhibit No 11 - see 4th Cert
of Petition No 1952.

(Here follows chart marked L. & N.'s Exhibit No. 11, page 840.)

Pewee Valley,	"	204	210	336	62.5
La Grange,	"	214	239	344	69.5
Campbellsburg,	"	228	265	352	75.3
Worthville,	"	241	252	367	68.2
Sparta,	"	252	290	377	79.9
Glencoe,	"	257	289	377	79.3
Verona,	"	271	280	377	79.3

(Here follows chart marked L. & N.'s Exhibit No. 11, page 840.)

LOUISVILLE & NASHVILLE EXHIBIT No. 12.

Statement Showing Distance and Total of the Present Rates on the Following Commodities, viz., Apples, Green, in bbls., L. C. L.; Canned Goods, C. L. and L. C. L.; Cheese, in Boxes, any Quantity; Drugs, Dry Goods, Groceries, Hardware, and Farm Wagons, K. D., L. C. L., from Nashville, Tenn., to L. & N. R. R. Stations, Maplewood, Tenn., to Verona, Ky., Incl., Shown Below, Compared with Total of Rates on Aforesaid Commodities per L. & N. R. R. Table A, for the Distance and Percentage Present Rates of L. & N. R. R. Table A.

666 (Here follow maps marked Exhibit B to 1.)

From Nashville, Tenn., to—	Distance.	Totals. Present rates.	Totals. Table A.	Percentage present rates of table A.	Tariff authority, present rates.
Maplewood, Tenn.	7	83	83	100	L. & N. R. R. I. C. C. No. A-11500
Edenwold, "	12	83	110	75.5	" " " "
Avondale, "	20	140	140	100	" " " "
Gallatin, "	28	186	186	100	" " " "
Fountain Head, "	40	226	226	100	" " " "
Mitchellville, "	46	250	265	94.3	" " " "
Franklin, Ky	53	280	280	100	" " " "
Woodburn, "	62	292	308	94.8	" " " "
Memphis Jct., "	69	321	321	100	" " " "
Bowling Green, "	73	198½	336	59.1	" " A-11547
Sunnyside, "	81	362	362	100	" " A-11500
Rocky Hill, "	91	373	380	98.2	" " " "
Cave City, "	102	387	396	97.7	" " " "
Rowletts, "	112	387	409	94.6	" " " "
Bonnieville, "	121	387	426	90.8	" " " "
Sonora, "	132	387	437	88.6	" " " "
Glendale, "	137	387	437	88.6	" " " "
Elizabethtown, "	145	370	455	81.3	" " A-10656
Lebanon Jct., "	157	381	468	81.6	" " A-11500
Bardstown Jct., "	165	360	485	74.2	" " " "
Hubers, "	172	305	496	61.5	" " " "
South Park, "	177	278	496	56.0	" " " "
Louisville, "	187	183	509	36.0	" " A-11514
St. Matthews, "	192	278	522	53.3	" " A-11500
Anchorage, "	199	305	522	58.4	" " " "
Pewee Valley, "	204	335	533	62.9	" " " "

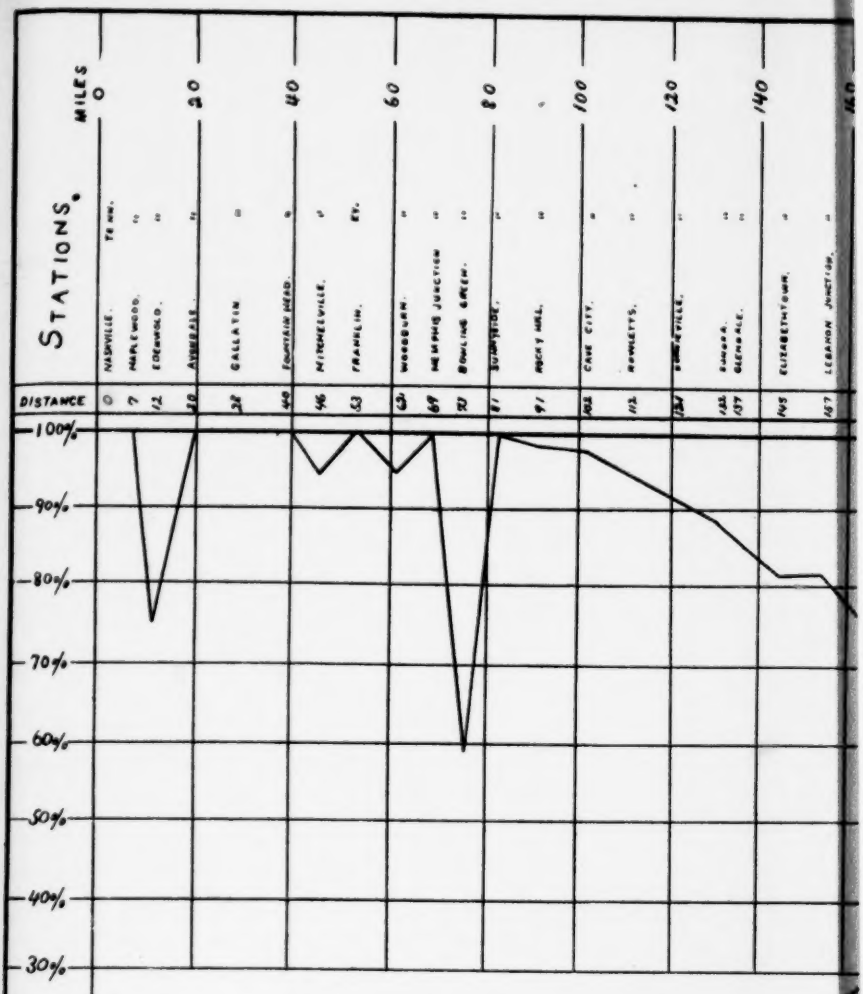


Chart showing relation of present rates on the following commodities viz:

Apples, green, in barrels, LCL. Drugs

C Goods CL and LCL Groceries, LCL

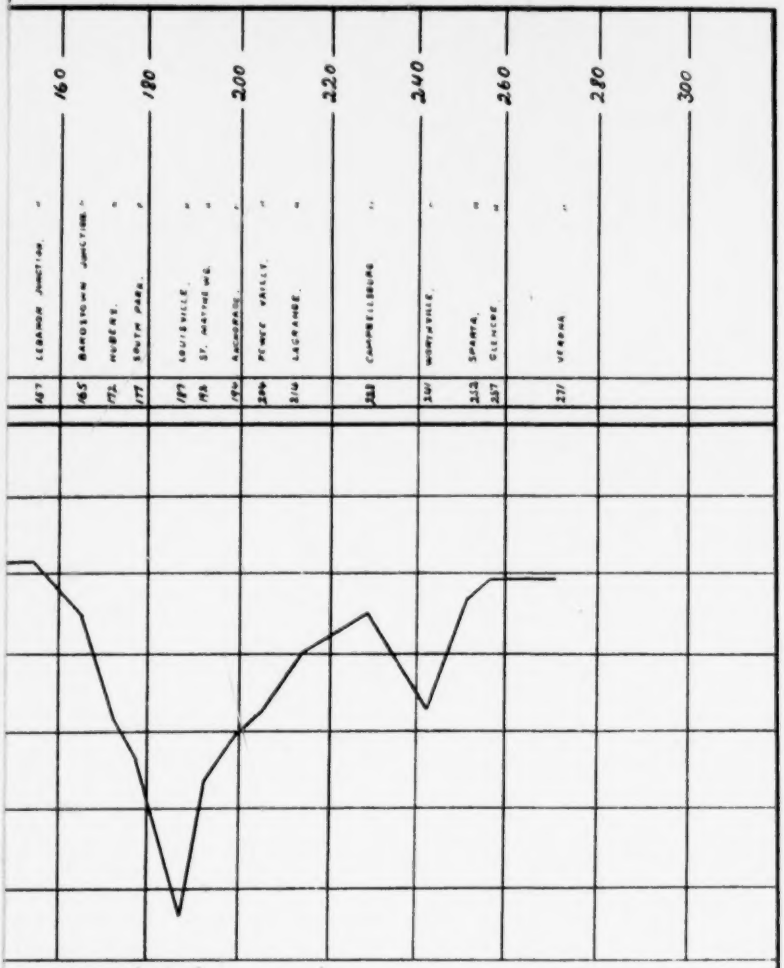
Cheese, in cases, any quantity. Hardware LCL

Dry Goods Wagons. Sinw, KD, LCL

from Nashville Tenn, to L&N.RR. stations shown above (Maplewood Tenn., to Vereens Ky., inclusive) to L&N.RR. Table A rates for the distance Table A is represented by straight line (100%)

667

Louisville & Nashville Exhibit No. 13.



No 823
L & N R.R. Co. } # 667.
The U.S.

L. & N. Exhibit No. 13 —
in 4th Dist Affirmation 1952

La Grange,	"	214	381	546	69.8	"	"	"	"
Campbellsburg,	"	228	421	559	75.3	"	"	"	"
Worthville,	"	241	367	583	63.0	"	"	"	"
Sparta,	"	252	460	600	76.7	"	"	"	"
Glencoe,	"	257	475	600	79.2	"	"	"	"
Verona,	"	271	475	600	79.2	"	"	"	"

(Here follows chart marked L. & N.'s Exhibit No. 13, page 842.)

(Here follows Louisville & Nashville Exhibit No. 14, marked p. 668.)

670 12½.

LOUISVILLE & NASHVILLE EXHIBIT No. 15.

In the Circuit Court of the United States for the Middle District of Alabama.

SOUTH & NORTH ALABAMA RAILROAD COMPANY, Complainant,
vs.
RAILROAD COMMISSION OF ALABAMA et al., Defendants.

Affidavit of W. A. Colston.

The affiant, W. A. Colston, states that he is 33 years of age and resides in Louisville, Ky.; that he is, and has been since January 1st, 1903, Assistant Auditor of Receipts, of the Louisville & Nashville Railroad Company, and has been acting in a similar capacity for the Comptroller of the South & North Alabama Railroad Company; that he has had more than 15 years' experience in railroad accounting and considers himself competent to compile statistics relating to railroad accounts, and to express an opinion based on such statistics as to the result of operation in the various classes of business usually conducted by railroads.

He states that during the month of May, 1904, there were compiled under his direct supervision, statistics showing the relative cost of handling freight on local freight trains and on through freight trains between Louisville, Ky., and Bowling Green, Ky., over the First Division of the Main Stem of the Louisville & Nashville Railroad Company; that in compiling these statistics it was assumed that the cost per train mile was the same for local freight trains as it was for through freight trains; that representatives of the Accounting Department were placed on freight trains and at terminal points, and the contents of both through and local trains, for the period for which statistics were gathered, were taken by these representatives of the Accounting Department — were complied in the General Office, under the immediate supervision of the affiant, with result that the cost of handling one ton of freight one mile on local trains over the division in question was shown to be 1.990 cents while the cost of handling one ton of freight one mile on through trains was shown to be .376 cents, or that the cost of hauling freight on local freight trains was 429.2 per cent higher than the cost of hauling freight on through freight trains over the division for which investigations were made; or, in other words, that the cost of hauling freight on local freight trains was 529.2 per cent of the cost of hauling freight on through freight trains, or over five times as great.

The affiant further states that although the results given above were based on the assumption that the cost per train mile was the same for local trains that it was for through trains, investigations subsequently made, to-wit: in July and August, 1906, showed

that the cost of handling a local train one mile over the divis-
671 ion in question is over 33 per cent in excess of the cost of handling a through train one mile, and that therefore the actual excess of the cost of hauling a ton of freight one mile in local freight trains over the cost of handling a ton of freight one mile in through freight trains is much greater than was shown by statistics based on the assumption that the cost per train mile was the same for local freight trains as for through freight trains.

The affiant further states that investigation made under his immediate direction, for a period of one week during the latter part of July and early part of August, in the year 1906, and including the movement of trains in the entire *of* State of Kentucky, and based on actual running expenses of such trains, as obtained from reports of Master Mechanics and Division Superintendents, showed that the cost of handling a ton of freight one mile on local freight trains for the entire State of Kentucky was 289 per cent more than the cost of handling a tone of freight one mile on through freight trains in the State of Kentucky; or in other words, the cost of handling a ton of freight one mile in a local freight train in the State of Kentucky was 389 per cent of the cost of handling a ton of freight one mile in a through freight train in the State of Kentucky, or nearly four times as great.

The affiant further states that the nature of the business handled by the South & North Alabama Railroad Company in the State of Alabama, as regards comparative cost of handling freight in local and in through trains is, taken as a whole, similar to that handled by the Louisville & Nashville Railroad Company in the State of Kentucky, with the possible exception of fuel and furnace material handled on local freight trains in Birmingham District at low rates per ton per mile, and at correspondingly low cost; and that taking into consideration possible differences which may exist in the nature of the business handled in the two states, and basing his opinion on investigations mentioned above, and other investigations which he has made along similar lines, and on his general experience as a Railroad Accountant, it may be conservatively estimated that the cost of handling freight on local freight trains of the South & North Alabama Railroad Company in the State of Alabama is between three and four times as great as the cost of handling freight on through freight trains of said Company in the State of Alabama.

(Signed) W. A. COLSTON.

Subscribed and sworn to before me, a Notary Public in and for the County of Jefferson, State of Kentucky, this fourth day of May, 1907.

My Commission expires on the twenty-ninth day of January, 1910.

(Signed) G. W. B. OLMSTEAD,

[SEAL.] *Notary Public, Jefferson County, Ky.*

Filed this twenty-first day of January, 1908.

J. W. DIMMICK, *Clerk.*

672 K.C./J.E.C.

May 7th, 1912.

E. L. Gaddess, Esq., Examiner, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: That Portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company Which Seeks Authority to Continue Lower Rates on Traffic through Louisville, Ky., to and from Clarksville and Nashville, Tenn., Than Are charged on Like Traffic to and from Intermediate Stations between Louisville, Ky., Clarksville and Nashville, Tenn.; Also That Portion of the Same Application Which Seeks Authority to Continue Lower Rates on Traffic through Nashville and Clarksville, Tenn., to and from Louisville, Ky., Than Are Concurrently Effective on Like Traffic to and from Intermediate Stations between Clarksville and Nashville, Tenn., and Louisville, Ky.

Pursuant to your request made at the hearing of the above entitled portion of Fourth Section Application of this Company, at Bowling Green, Ky., on April 29th, I enclose the following statements which afford comparisons of the longer distance rates between Louisville, Ky., and Nashville and Clarksville, Tenn., with the shorter distance rates to and from intermediate stations. I have marked the exhibits beginning with No. 2, inasmuch as there was filed as Exhibit No. 1 at Bowling Green the brief on behalf of defendants in the case of Bowling Green Business Men's Protective Association of Bowling Green, Ky., vs. Louisville & Nashville Railroad Company and Others.

Louisville & Nashville Exhibit No. 2.

A statement showing present rates, in cents, per hundred pounds on Classes 1 to H, inclusive, and per barrel on Class F, from Nashville, Tenn., to Louisville, Ky., and from Clarksville, Tenn., to Louisville, Ky., as compared with the highest rates from Nashville and Clarksville, respectively, to intermediate points.

Louisville & Nashville Exhibit No. 3.

A statement showing present rates on Classes 1 to F, inclusive, from Louisville, Ky., to Clarksville, Tenn., and from Louisville, Ky., to Nashville, Tenn., as compared with the highest rates from Louisville to intermediate points. The rates are shown in cents per hundred pounds, except that rates for Class F are shown per barrel.

Louisville & Nashville Exhibit No. 4.

A statement showing lowest rates on Classes 1 to F, inclusive, between Nashville, Tenn., and Louisville, Ky., and between Clarksville, Tenn., and Louisville, Ky., as compared with the highest rates applying between intermediate points.

Louisville & Nashville Exhibit No. 5.

Table A Scale of Rates of the Louisville & Nashville Railroad Company, showing mileages according to which the scale was constructed.

673 It will be noted that the highest rates applying on the Main Stem of the Louisville & Nashville Railroad from or to Louisville and Nashville or between intermediate points are those shown for Division No. 19 based on the mileage scale for distances over 95 miles and not over 100 miles, and the highest rates from Clarksville, Tenn., to intermediate points or applying between points intermediate to Louisville and Clarksville are those provided by Division No. 20, which applies to distances over 100 and not over 110 miles.

Louisville & Nashville Exhibit No. 6.

A statement showing distances and totals of the present first six class rates from Louisville, Ky., to sundry Louisville & Nashville Railroad stations, South Park, Ky., to Veto, Ala., inclusive, compared with the totals of the first six class rates per Table A of the Louisville & Nashville Railroad Company for the distance, and the percentages of the present rates to Table A rates. Tariff authority is given for present rates, and Table A rates can be checked from Exhibit No. 5.

Louisville & Nashville Exhibit No. 7.

A chart showing the relation of the present rates on the first six classes from Louisville, Ky., to Louisville & Nashville Railroad stations indicated, South Park, Ky., to Veto, Ala., inclusive, to L. & N. R. R. Table A rates for the distance. In this chart Table A rates are represented by the straight line, 100 per cent, and the present rates are charted according to their percentages of the Table A rates.

Louisville & Nashville Exhibit No. 8.

A statement showing distances and totals of the present rates on certain commodities, viz: apples, green, in barrels, L. C. L.; canned goods, C. L. and L. C. L.; cheese in boxes, any quantity; drugs; drygoods; groceries; hardware and farm wagons, K. D., L. C. L.; from Louisville, Ky., to Louisville & Nashville Railroad stations, South Park, Ky., to Veto, Ala., inclusive, shown in statement, compared with the totals of rates on the same commodities per L. & N. R. R. Table A for the distances, and the percentage relations which the present rates bear to Table A rates. This table is furnished to illustrate the effect of water competition at Bowling Green, Ky., the competition on the Green and Barren Rivers having been met by the issue of reduced commodity rates rather than by class rate reduction.

Louisville & Nashville Exhibit No. 9.

A chart in which the relation of the commodity rates covered by Exhibit No. 8 to the Table A rates is shown graphically, the Table A rates being represented by the straight line, 100 per cent, and the

commodity rates for the several stations being represented
674 either by the 100 per cent line where they coincide with the Table A rates, or by line below the 100 per cent line plotted according to the percentages which the reduced commodity rates are of the Table A rates.

Louisville & Nashville Exhibit No. 10.

A statement showing distances and totals of the present first six class rates from Nashville, Tenn., to Louisville & Nashville Railroad stations, Maplewood, Tenn., to Verona, Ky., inclusive, shown on statement, compared with the total of the first six class rates per Louisville & Nashville Railroad mileage scale, Table A, for the distances, and the percentages which the present rates are of the Table A rates.

Louisville & Nashville Exhibit No. 11.

A chart showing graphically the relations of class rates stated on Exhibit No. 10.

Louisville & Nashville Exhibit No. 12.

A statement showing distances and totals of the present rates on certain commodities, viz: apples, green, in barrels, L. C. L.; canned goods, C. L. and L. C. L.; cheese, in boxes, any quantity; drugs, drygoods; groceries; hardware; and farm wagons, K. D., L. C. L.; from Nashville, Tenn., to L. & N. R. R. stations, Maplewood, Tenn., to Verona, Ky., inclusive, shown on the statement, compared with the totals of rates on the same commodities per Louisville & Nashville Railroad mileage scale, Table A, for the distances, and also the percentages of the present rates of the Louisville & Nashville Railroad Table A rates. This exhibit, as was the case with exhibits No. 8 and No. 9, is presented in order to illustrate the manner in which water competition at Bowling Green, Ky., has been met by the reduction in commodity rates.

Louisville & Nashville Railroad Exhibit No. 13.

A chart showing graphically the relations of rates covered by Exhibit No. 12.

At the request of Mr. W. A. Colston, Commerce Attorney, I also enclose the following statements, which are included in testimony introduced in the Fourth Section hearings at Washington, D. C., on April 8, 1912, by Mr. A. R. Smith, Third Vice President of this Company (Transcript, pp. 790-812), which testimony was referred to and made a part of the record in this case.

Louisville & Nashville Exhibit No. 14.

A statement showing the relative haulage cost of handling local or short-haul freight compared with the cost of handling through

or long-haul freight, ascertained from actual tests made on the
675 Mobile & Montgomery Division during the week September 22-28, inclusive, 1907, and a test made on the Main Stem of the Louisville & Nashville Railroad (which is the Division between Louisville, Ky., and Nashville, Tenn.) in August, 1906. This statement shows that for the expenses in question the cost per ton mile on local trains on the M. & M. Division in Alabama was more than five times as great as the cost per ton mile on through trains on that Division, and that the cost per ton mile in local trains on the First and Second Divisions of the Main Stem, in August 1906, was over 3.7 times as great as the cost per ton mile in through trains; and that the cost per ton of the long-haul through freight on the Main Stem, in August 1906, was actually less than one-half the cost per ton for the short-haul local freight on the Main Stem for that month.

Louisville & Nashville Exhibit No. 15.

Copy of affidavit made by W. A. Colston, then Assistant Auditor of Receipts of the Louisville & Nashville Railroad Company, on May 4th, 1907, filed as Exhibit No. 12½ by Mr. A. R. Smith in testimony given by him at Washington on April 8th, which affidavit shows that, according to a test made in May 1904 for the purpose of ascertaining the relative cost of handling freight on local freight trains and on through freight trains between Louisville, Ky., and Bowling Green, Ky., over the First Division of the Main Stem of the Louisville & Nashville Railroad Company, upon the assumption that the cost per train mile was the same for local freight trains as for through freight trains, it was found that the cost of hauling freight on local trains was 529.2 per cent of the cost of hauling freight on through freight trains, or over five times as great; and that although the results given were based on the assumption that the cost per train mile was the same for local trains that it was for through trains, investigations subsequently made, to-wit: in July and August 1906, showed that the cost of handling a local train one mile over the Division in question was over 33 per cent in excess of the cost of handling a through train one mile over that Division.

I give, as follows, a further explanation of the rates between Louisville, Ky., and Nashville, Tenn., which are graphically represented by charts enclosed herewith and filed as exhibits in connection with my testimony. Class rates southbound: From Louisville, Ky., to L. & N. stations, South Park, Ky., to Veto, Ala., inclusive, are based generally on Louisville and Nashville Railroad mileage scale, Table A, for the respective distances; to Elizabethtown, Ky., competition with the Illinois Central has forced the rates somewhat below Table A rates; and the lower rates to Tunnel Hill, Glendale, and Upton represent the effect of competition at adjacent stations on the Illinois Central Railroad, or of "cross-country competition"; the present rates to Rocky Hill and Horse Cave have been in effect for over twenty-years and appear to have been figured on one mile less distance than the present actual mileage; to stations north of Nashville over
676 100 miles from Louisville Table A rates for 100 miles (Division No. 19) are observed as a maximum, the rates not ex-

ceeding lowest combination. At Bowling Green, Ky., the rates, particularly in commodities, are lower on account of competition in the Green and Barren rivers. At Nashville the rates are lower on account of river, rail, and other competition. To points south of Nashville the rates are made on Nashville combination, which results in giving local stations, to that extent, the benefit of competition which exists at Nashville, and in lower totals than the Louisville & Nashville Table A rates for the distances.

On northbound rates to local stations between Nashville and Louisville, Table A scale is observed for the first 100 miles, the rates for that distance (Division No. 19) being observed as a maximum to all stations on the Main Stem when not higher than combination. When these rates were first established the depot at Nashville, Tenn., was 185 miles from Louisville; the present distance is 187 miles. This results in the present rates to Edenwold, Mitchellville, Woodburn, Rocky Hill, and Cave City being one division number lower than Table A for the actual distance. At Bowling Green the rates, particularly on commodities, are lower than Table A rates on account of competition of the Green and Barren rivers. Approaching Louisville the *graph* of the rates tends downward on account of the observation of Division No. 19 rates and Louisville combination as maxima. At Louisville the rates are lower than Table A for the distance by reason of competition by water and rail, as explained in the testimony in this case. At the points on the Cincinnati Division north of Louisville the rates are lower than Table A on account of combinations on Louisville and Cincinnati being observed as maxima. The especially low rates to Worthville are further affected by the competition in the Kentucky River.

Yours very truly,

D. M. GOODWYN,
General Freight Agent.

677 Reporter's transcript of testimony of A. R. Smith, Third Vice President of the Louisville and Nashville Railroad Company, referred to in the foregoing præcipe and filed in the United States Commerce Court on April 29th, 1913, is as follows:

United States Commerce Court.

No 86.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent; INTERSTATE COMMERCE COMMISSION, Intervener.

Reporter's Transcript of Testimony of A. R. Smith, Third Vice-President of the Louisville & Nashville Railroad Company, Before the United States Commerce Court, at Washington, D. C., Friday, April 25, 1913.

Filed April 29, 1913.

678 United States Commerce Court. Filed Apr. 29, 1913. G. F. Snyder, Clerk.

Before the United States Commerce Court.

No. 86.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervener.

WASHINGTON, D. C., Friday, April 25, 1913.

United States Commerce Court. Filed Apr. 29, 1913. G. F. Snyder, Clerk.

Before the United States Commerce Court.

No. 86.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervener.

WASHINGTON, D. C., Friday, April 25, 1913—
2:00 o'clock p. m.

Present: Judges Knapp, Hunt, Carland and Mack.

Appearances:

Mr. William A. Colston, on behalf of the Petitioner.
Mr. Winfred T. Denison, Assistant Attorney General, on behalf of the Respondent.
Mr. P. J. Farrell and Mr. Charles W. Needham, on behalf of the Intervener.

Proceedings.

Judge Knapp: Mr. Colston, we understand that the entire record before the Commission in this Fourth Section Application, or a certified copy of the application, having been admitted without objection, there is no further testimony that you desire to take except that which relates to the situation described concerning the Cumberland Gap Dispatch?

Mr. Colston: Your Honor——

Judge Knapp: Is that a fact?

Mr. Colston: No. The entire record in the Fourth Section Application No. 1952 is not before the Court in this case. The en-

679 tire record in that particular hearing, which was had with reference to Application No. 1952, at Bowling Green on one day, is before the Court, but the entire record in that application, or in the proceedings on that application before the Commission, is not here.

In addition to the Cumberland Gap Dispatch matter to which your Honor refers, I desire to show that there is other freight, of which I gave one example, that representing freight to and from Knoxville, Tennessee, and to and from Nashville.

Judge Knapp: As to the record I have difficulty in understanding you, Mr. Colston. It was stated here, as I distinctly understood, and admitted by you, that the hearing under the Fourth Section Application, that at that hearing the record before the Commission in the Bowling Green case was introduced and made a part of it.

Mr. Colston: That is correct, your Honor. That is correct.

Judge Knapp: Now, what other testimony is there that has been taken before the Commission or any body else that is not here?

Mr. Colston: In the Fourth Section Applications there have been a number of hearings. There have been hearings at Atlanta, at Birmingham, and at Washington, and there have been arguments, and the case was submitted only last month, on our Fourth Section Application No. 1952, and it was thought in that respect correct, your Honor——

Judge Knapp: Have you offered any of that testimony?

Mr. Colston: We have not.

Judge Knapp: Well, do you want it?

Mr. Colston: I want to introduce some of it, your Honor, but I intended to show practical-y the same thing by a witness, and his testimony will be a condensation of tha which was presented before the Commission, and we would avoid the voluminous record in that way.

Judge Knapp: Do you have your witness here?

Mr. Colston: I have, sir.

Judge Knapp: We will take that testimony, subject to objection, reserving the question of its admissibility and releveancy.

Mr. Colston: Mr. A. R. Smith.

A. R. SMITH was called as a witness on behalf of the Petitioner, and being first duly sworn, testified as follows:

Direct examination.

By Mr. Colston:

Q. Mr. Smith, state your name, residence and occupation.
A. A. R. Smith, Third Vice President, Louisville & Nashville Railroad Company, Louisville, Kentucky.
Q. Are the circumstances and conditions surrounding the transportation of traffic to and from the City of Bowling Green, Kentucky, substantially or at all similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Nashville, Tennessee, and Louisville, Kentucky?
680 Mr. Farrell: My understanding, if your Honor please—and I do not want to object to specific questions—is that this is all taken under objection.
Judge Knapp: Yes.
Mr. Denison: I am inclined to think that, irrespective of the question whether additional testimony may be taken at all, that question is particularly objectionable.
Judge Hunt: Do you think that involves a legal question?
Mr. Denison: Exactly, and it calls for a conclusion, and I suppose that special objection might be taken to it.
Judge Knapp: Was not that all gone into before the Commission?
Mr. Colston: It was, your Honor, with the exception, as I say, of the short line transportation between Knoxville and Nashville, and possibly some other matters relating to that.
Judge Knapp: We do not think you should go into the broad question. Bring your witness to the specific point you want to cover.
Mr. Colston: Now, may it please the Court, to save time in connection with a number of similar questions which I desire to ask, I would ask, if it will meet the approval of the Court, to read those questions in order that it may appear of record which questions I desire to ask, and in order that, in accordance with Equity Rule, 46, effective February 1, 1913, it may appear what evidence was offered and excluded.
Judge Knapp: Ask your question, I do not care whether you read it or not. You may do as you desire.
Mr. Colston: My suggestion was, your Honor, that I read a number of them along the same line, in order that they may be ruled out. However, I will ask them one at a time.
It will be understood, your Honor, that we reserve an exception to the ruling against all of these questions?
Judge Knapp: Yes.
The Witness: Do I understand, your Honor, that I am not to answer them?
Mr. Colston: The ruling was that that question was not to be answered as it was given?
Judge Knapp: That particular question, yes.

Judge Hunt: No; I do not understand that to be the understanding. My suggestion was at once that the question might be open to objection as involving a legal conclusion. It occurred to me that I would see no objection to the witness answering, even though it were made up of questions of law.

By Mr. Colston:

Q. You can answer that question, then, Mr. Smith, stating the facts as they appear to you and as they are known to you, from your experience as a traffic man; and, first, I will ask you what connection, if any, you have with the Louisville & Nashville Railroad Company?

A. Third Vice President, in general charge of traffic.

681 Q. What has been your experience in traffic matters in the Southeast?

A. I began in the traffic department about twenty-four years ago, served through various minor capacities with the Louisville & Nashville Railroad, the Southern Railway, a fast freight line, called the Asheville Line, association work, general freight agent of the West Point Route, and through to my present position.

Q. Are the traffic and transportation circumstances and conditions surrounding the transportation of traffic to and from the City of Bowling Green, Kentucky substantially or at all similar *similar* to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Nashville, Tennessee and Louisville, Kentucky, and state the facts in general upon which your answer is predicated, or the circumstances as you see them upon which your answer is predicated?

Mr. Denison: I object, if the Court please, on the ground that the question calls for a conclusion on a question of law, and that it is immaterial.

Judge Knapp: He may answer.

Mr. Denison: I except.

A. The City of Bowling Green is a local station on the Louisville & Nashville Railroad, a little over midway between Louisville and Nashville, and, in so far as rail transportation is concerned, it is in the same category as any other local station. There is no outside competitive influence beyond those coming from the river competition. The town never had any importance in the beginning of the rail operations, being nothing but a consuming village. The water competition in the early days amounted to a small factor.

On the other hand, Nashville was an important distributing point and producing point before the advent of the railways. Its rates as they at present stand were developed not only by very potent and active competition on the Cumberland River, but by means, first of all, of separate rail lines, subsequently merged into two, and at the present time three separate rail lines, which, in their divergence, reach all parts of the country. We note that the river business at Nashville, until comparatively late years, has been of such importance that at times it outranked the rail business. There are

on record in the Commissioner's offices instances showing an absolutely crowded wharf, with the steamboats lying by waiting their turn. Of course, that is not true of this date, although the boat service in the Cumberland River is much more active and larger than in the Green or Barren River.

The situation at Clarksville, in a lesser way, is about what it is at Nashville. There are two rail lines serving that point, one of which is of comparatively recent origin, but the business by water has always been active. As late as 1872, our records indicate that about 80 per cent of the total tonnage in and out, of all descriptions, at Clarksville, was handled by water. That is about reversed at the present date.

The rail competition at Nashville is today very active. While the Louisville & Nashville Railroad is financially interested
682 in the Nashville, Chattanooga & St. Louis Railway, which serves Nashville to the northwest, to the west, and to the southeast, that line is one of our most active competitors. It is understood that, under its charter arrangements, it will have to always remain as an independently operated road.

Mr. Denison: Which one is that?

The Witness: The Nashville, Chattanooga & St. Louis Railway.

By Judge Mack:

Q. Do you not own its stock?

A. No.

Q. Do you not practically own it?

A. According to what has been said in this record, 71 per cent. Personally, I do not know. It is more than a majority.

The other road is the Tennessee Central, which is a very active competitor, although, being a small line and a new one, its activities, as far as the Louisville & Nashville Railroad is concerned, have not been as great as those of the Nashville, Chattanooga, & St. Louis Railway. It joins the Illinois Central on the west, and thereby reaches a great deal of northern territory, and all of the West. On the eastern end, it connects with the Cincinnati Southern and the Southern Railway, and through them, reaches the North and Northeast and Southeast, etc.

By Mr. Colston:

Q. Have yon, in your answer, compared the water competition, which I believe you mentioned as existing at both Bowling Green and Nashville and Louisville? If not, please compare the water competition which exists at those three points.

A. In the Cumberland River, in 1904, according to Government reports, the latest that I have, I find 33 packet steamers, whose tonnage ranges from 234 tons down to a very minor capacity. All but six of those steamers are of greater than 50 tons. In addition to that, of course there are a great many tow boats and barges, most of them, however, being owned by industries. One of the packet companies has several barges and a tow boat.

In the Barren River and in the Green River, there is a total of

nine packets, five of them being of greater than 50 tons capacity, the greatest being 198 tons. According to Government statistics, the average tonnage for ten years, above Nashville, in the Cumberland River, amounted to 253,800 tons. Below Nashville, it amounted to 261,836 tons.

In the Barren River, on which Bowling Green is located, the average tonnage for the ten-year period, according to the Army Engineer's report of 1912, was 37,550. In other words, the tonnage below Nashville and above Nashville, separately, are each about between seven and eight times that in the Barren River. I have not averaged the figures for the upper part of the Green River, but they will average, in ten years, about 100,000 tons.

In the Green and Barren Rivers, the navigation above the mouth is practically the year around, there being no interruption on accout of it being slack water. During the two months, however, they cannot get into the Ohio on account of the conditions at the lowest lock. In the Cumberland River, the operation is for about nine months for steamers of the ordinary draft, and for steamers of very light draft the year around.

683

Q. How do the conditions of water competition at the three places compare as to their controlling effect upon rates——

Mr. Denison: The same objection.

By Mr. Colston:

Q. (Continuing:) —in your experience as a traffic manager?

Mr. Denison: The same objection.

A. The volume of the tonnage in the Cumberland River naturally makes the boats much more active, and, in addition, their rates have been made on a lower plane than in the Green and the Barren Rivers. We feel the competition in the Barren much less than we do in the Cumberland. Aside from that, the volume of business to be handled at Bowling Green, in or outbound, is so materially less than at either Nashville or Clarksville, that, naturally, we would feel the competition at Bowling Green less than at the other two points.

By Mr. Colston:

Q. Is there any rail competition at Bowling Green at all?

A. No sir.

Q. Is there rail competition at Nashville and at Louisville, and if so, what is the nature of that competition, that is, is it controlling and substantial or negligible?

A. At Louisville, we have nine railroads radiating in all directions, and competition always has been very keen and controlling.

At Nashville, when the Louisville & Nashville Railroad was built into *the* point, it had the Nashville, Chattanooga & St. Louis connected with it to the south, and the Nashville & Decatur towards Alabama, towards the Tennessee River, which incidently, was competing from other sections than those served by the Louisville & Nashville Railroad. We had the line from Evansville, now a part

of the Louisville & Nashville system, and the Nashville & Northwestern, now a part of the Nashville & Chattanooga road. Those factors have established a very low plane of rates, along with the competition that they all found with the River. Those rates have remained, barring occasional changes, in effect substantially for twenty-five or thirty years. The competition today is very free. The Nashville, Chattanooga & St. Louis Railway is actively competing with us into all sections of the country, with the exception of a small zone in North Alabama, Southeastern Tennessee, and the north corner of Georgia.

The Tennessee Central, while it is not so very active in competing with us for traffic to or from Alabama, and Mississippi, is active in all other territories.

684 Q. How do the rates now in effect to and from Bowling Green, Kentucky, compare with the rates to and from other local stations on the Louisville & Nashville Railroad and with rates in effect to and from other places in the Southeast situated similarly to Bowling Green?

A. The rates on the Louisville & Nashville Railroad from the Ohio River to Bowling Green are lower on a material portion of the traffic than to adjacent local stations. They are below our mileage scale for that distance on all classes, and very materially below on a large number of commodities. These rates will average for the distances, I think, below rates for similar distances between other points in the Southeast, where there is not any greater competition.

Q. What has caused the rates to Bowling Green to be lower than your mileage scale, to which you refer?

A. As far as the class rates are concerned, they have been made on the blanket scale, along with various other local stations; so that, in that respect, there is no discrimination as between Bowling Green and the other stations. We have a very long list of commodity rates which were made in relation to the corresponding river rates. I may say that we have varied from the adjacent local adjustment only to the extent that we have met river competition.

Q. Have those rates that have been made to meet water competition at Bowling Green been made sufficiently low to move a reasonable part of the traffic in competition with the river?

A. Yes. We are moving inbound about betwen 70 and 75 per cent of the aggregate total, and outbound a little more, in the neighborhood of 80 per cent, according to the best information that we have been able to obtain.

Q. Is it possible for the Louisville & Nashville Railroad Company to comply with the effect of the 4th Section order complained of in this case, by raising its rates to Knoxville under present circumstances and conditions?

A. That old river competition at Nashville, naturally, has decreased, due to the superior service of the railroads and their general activities and the fact that industries and shipping concerns are now widely scattered over a territory now served directly by boats, and, to that extent, we could raise our rates, assuming that we could get the consent of the other rail lines to do so; but from a discussion,

not conclusive but rather exhaustive, that I have had with one of the other lines, I am quite certain they will not assent to raising the rates to Nashville, because, in the judgment of that road, it will immediately invite added river competition.

By Judge Knapp:

Q. That is, under the existing conditions, it is impracticable to raise your Nashville rates?
A. Yes sir.

685 By Mr. Colston:

Q. Is it practicable, under existing conditions, to raise the rates to Louisville on oranges from Florida points?
A. Not unless we want to go out of the traffic.
Q. Does the Louisville & Nashville Railroad Company own any part of the stock of the Evansville & Bowling Green Packet Company, or any other packet company operating in the Green and Barren Rivers, or serving Bowling Green?
A. No sir.
Q. Has it anything to do, or has it had at any time, anything to do, with the making of the rates from Evansville to Bowling Green, or the making of the rates of the packet company?
A. No sir. We have never had a voice in that at any time.

By Judge Mack:

Q. Has it owned any of the stock?
A. No sir; it never has.
Q. In the past?
A. No sir.

By Mr. Colston:

Q. Can you state how the present rates of the Evansville & Bowling Green Packet Company, which serves Bowling Green were arrived at?
A. In 1901, the Business Men's League of Bowling Green was dissatisfied with the then existing boat rates, which were made, so I understand, the same as they way landings rates. They made a contract with the owner or operator of a steamer, under which that steamer (The Sun) established specific rates very much lower than had been observed. The result was a rate war in the Barren River, and finally either the Bowling Green organization dismissed the Sun, or it ceased operations. In any event, it stopped operations, but the combination was an agreement with the present line of boats in the river, the Evansville & Bowling Green Packet Company, by which the Packet Company agreed to observe these contract rates made with the Sun. Those rates fixed in 1902 or 1903 have been in effect ever since, barring, of course some reductions that have been made from time to time. I think our check shows no advance.
Q. How did the Louisville & Nashville Railroad Company adjust its rates, if at all, with relation to these rates made by the steamer

Sun and adopted by the Packet Company as the result of the compromise with the people of Bowling Green by the packet company?

A. We made rates on a larger number of moving commodities of fixed differentials higher than the corresponding water rates from Evansville, making those rates of ours apply from Evansville. Those differentials took into account the more frequent and satisfactory service of the rail lines, as well as the marine insurance. Having fixed Evansville, we established rates from Louisville the same, making Cincinnati and St. Louis, etc., on differentials as related to Evansville and Louisville.

686 Q. Has the situation, or have the circumstances with respect to water competition at Bowling Green, or in the Green and Barren Rivers, ever been such as to exert a substantial or controlling effect upon the rates of transportation at Bowling Green beyond the extent to which it has been met by the Louisville & Nashville Railroad Company?

A. No sir; not according to either my recollection or from the records that we have.

Q. Have you done anything to suppress competition in the Green and Barren Rivers?

A. No sir.

Q. Does the ownership of the stock which the Louisville & Nashville Railroad Company has in the Nashville, Chattanooga & St. Louis Railway enable you in any way, or any other officer of the Louisville & Nashville Railroad Company, to dictate the rates to be charged by the Nashville, Chattanooga & St. Louis Railway?

A. No sir. There is no officer of the Louisville & Nashville Railroad Company who is also an officer of the N. C. & St. L., with a single exception, and he is a man in charge of handling cars and switch engines at Nashville. As I said before, the status of the N. C. & St. L. is such that we are absolutely unable to dictate to, or in any wise influence, other than in the same way that it might influence any other railroad official, the officials of the Nashville, Chattanooga & St. Louis Railway.

Q. Have you any control over rates made by the Illinois Central in connection with other carriers into or out of Nashville?

A. No sir.

Q. Does the Illinois Central compete for business into and out of Nashville with any other carriers, and if so, what carriers, and how?

A. It has established a through route via Martin and the N. C. & St. L. into and out of Nashville, which has influenced the traffic roughly, west of Indianapolis. It has a route through Hopkinsville, Kentucky, the Tennessee Central, by which it handles all of the same type of traffic, and from the same territories as does the Louisville & Nashville through Louisville.

Q. Does the Louisville & Nashville control in any way the actions or policy of the Tennessee Central Railroad?

A. None whatever.

Q. You have spoken of the necessity of reducing the rates to and from Bowling Green if the order is complied with, because of the

inability to raise the Louisville or Nashville rates. Would compliance with the order have any effect on rates to and from stations near to Bowling Green, and, if so, how would that effect be felt?

A. A great many of the rates to stations both north and south of Bowling Green, in that immediate territory, could be reduced on combination, if we put into effect the rates ordered by the Commission.

Q. Were you the officer who filed the 4th Section application known as No. 1952, on behalf of the Louisville & Nashville Railroad Company, with the Interstate Commerce Commission?

687 A. Yes, sir.

Q. Was Bowling Green, Kentucky one of the points with respect to which lower rates were asked to be authorized than were in effect to and from intermediate points? Did you ask for relief as to Bowling Green, as well as to Nashville?

A. I would have to refresh my memory, Mr. Colston. I am pretty sure it was.

Mr. Colston: The record will show.

Judge Knapp: The application will show for itself.

Mr. Colston: Certainly, your Honor. At the time I made my memorandum, I did not know that we would introduce that application, although I contemplated it. I will withdraw that question.

By Mr. Colston:

Q. In the 4th Section application referred to, which has been filed with the Commission, authority is asked "to continue to employ the principles, bases and adjustments upon which were constructed rates legally on file with the Interstate Commerce Commission, both as to traffic passing between points on its own rails and as to traffic passing between points, one or both of which are not located upon petitioner's lines," etc. Please state the principles according to which rates generally are constructed on the Louisville & Nashville lines, and under what circumstances you depart from the general rule or plan or scale according to which your rates are made.

A. Between points on the Louisville & Nashville Railroad, our primary basis is our mileage tariff. We depart from that only through force of competitive circumstances, both direct and active and market and the like. Between points on the Louisville & Nashville Railroad and points on connecting lines, our primary basis is the addition of our rates to those of the connection. There again we frequently vary by reducing to meet competitive conditions.

Q. Is that what you mean by asking for permission to observe the principles upon which your rates were constructed?

A. Yes sir, that was the principle factor I meant.

Q. Mr. Smith, did you testify in the hearing which was held on the 4th Section application at Bowling Green, Kentucky?

A. No sir.

Q. Have you testified at any other hearings in connection with the 4th Section Application No. 1952?

A. Yes. I testified at practically all the hearings with respect to the general application.

Q. State some of the points at which hearings were had in 4th Section Application No. 1952, besides the hearing at Bowling Green.

Judge Mack: Does not the record show that?

Mr. Colston: No sir.

A. Hearings were held at Atlanta, at Birmingham, at Chattanooga, at New Orleans, and at Washington, and I testified at all except the New Orleans hearing.

688 By Mr. Colston:

Q. Do you know approximately when the case on 4th Section Application No. 1952 was finally argued and submitted to the Commission?

A. It was concluded, as I recall it, on March 31, 1913.

Q. Does the Louisville & Nashville Railroad Company handle any traffic through Bowling Green, to and from Nashville, Tennessee, which does not pass through Louisville, Kentucky? If so, state what traffic that is and explain the circumstances and conditions of that traffic, in a general way, giving attention particularly to traffic other than that which moves via the Cumberland Gap Dispatch.

A. May I place this map before your Honors, to enable you to follow me? It will be observed that the Louisville & Nashville has a line leaving its main line at Lebanon Junction, 30 miles south of Louisville, and passing in a southeasterly and thence a southerly direction through Knoxville, through Marietta, and a line runs to Marietta and Cartersville, Georgia. There is a substantial amount of traffic passing between Nashville and points on that line. There are a number of factories at Nashville which ship very considerably to Knoxville, as a jobbing proposition, perhaps. Similarly, Knoxville ships in to Nashville. The adjustment of rates as now existing between Knoxville and Nashville was built up over the route of the Southern Railway to Chattanooga, thence the Nashville and Chattanooga, into Nashville. Since that date the Louisville & Nashville's own lines have reached Knoxville, and the Tennessee Central, working east from Nashville, joins the Southern Railway at Harriman Junction.

Now, the Louisville & Nashville Railroad is actively soliciting its share of the traffic that passes between those two cities, and we are, I presume, getting our share of it.

The rate-making route, the one that made the rates, is that of the Southern, and the N. C. & St. L. The distance is 262 miles, and the short route is 218 miles. The Louisville & Nashville route through Lebanon Junction is 403 miles. If the Commission's order remains as it reads, and we have to observe it, it will mean that we will have to charge between Knoxville and Bowling Green no greater rate than we assess between Knoxville and Nashville.

In addition to that particular traffic, Nashville is shipping certain commodities, like tobacco and the like, to the intermediate territory

by our line south of Lebanon Junction. Until we get to Jellico, Tennessee, however, there is no substantial effect upon our rates by this order, but when we strike Jellico, there again we find a short route, which is 251 miles as against our 328. Then there is a very material coal movement from that entire southeastern section to our whole line, Louisville to Nashville.

The whole of the distance is much shorter via the Tennessee Central and via the N. C. & St. L. than via our line. We find, too, that from further south, a place called Tate, using Tate as a typical point in the marble district, there is a good movement of marble in its various shapes to Nashville.

689 The route through Marietta, thence W. & A. and N. C. & St. L., is open, that being the original route, and we have never undertaken to compete via our own line from Lebanon Junction.

Then, Nashville has been shipping quite considerable to the furnaces at Copper Hill, Tennessee. The situation with respect to Copper Hill is relatively the same as at Tate. We do not compete from points south of Marietta and Cartersville via Knoxville and Lebanon Junction to Nashville.

Q. Among the routes from New York and the Eastern cities or points related to New York, to Bowling Green and Nashville, how does the Cumberland Gap dispatch compare in importance? Is it an important or negligible route?

A. No. It has produced quite a considerable tonnage for us, but I think that the route through Atlanta has handled more tonnage than has the Cumberland Gap Dispatch. The Cumberland Gap Dispatch, however, I believe, gives us more freight than do the trunk lines, all-rail.

Q. You speak of a route via Atlanta. You mean——

A. Well, via Chattanooga. I am speaking of our competitors' routes.

Q. That which moves via Atlanta does not move into Nashville over the Louisville & Nashville rails?

A. No.

Q. Speaking with reference to the traffic which moves into Nashville over the Louisville & Nashville rails, how does the Cumberland Gap Dispatch compare with other routes from the East?

A. It gives us a greater tonnage than does any other fast freight line, and I believe it gives us a greater tonnage or nearly as great as all of the all-rail routes through Cincinnati and Louisville.

Q. Does traffic via the Cumberland Gap Dispatch destined to or originating at Bowling Green or Nashville pass through Louisville, Kentucky?

A. No. It comes via our line from Norton, Virginia to Lebanon Junction, and thence moves south.

Q. How far is Lebanon Junction south of Louisville?

A. Thirty miles.

Q. Have you a junction with any other carrier south of Louisville, and between Louisville and Bowling Green?

A. Yes; with the Illinois Central at Elizabethtown, Kentucky.

Q. How far south of Louisville is Elizabethtown?

A. Forty-two miles.

Q. If any business should move from the Illinois Central to Nashville or Bowling Green, and be delivered to you at Elizabethtown for completion of the haul, would that traffic pass through Louisville?

A. No.

Q. Can you state approximately the loss of revenue to the Louisville & Nashville Railroad Company which would result on business received at and forwarded from Bowling Green annually, if the Louisville & Nashville Railroad were compelled to comply with the effect of the 4th Section order complained of in this case?

690 A. Our accounting department made a survey of billing for one month, both received and forwarded, at Bowling Green. Using the loss shown by that survey, and multiplying it by the factor of 12, we would have a loss, had the rates been in effect during the 12 months, of about $19,674 on freight received, and $11,171 on freight forwarded.

Q. How do the rates of the Evansville & Bowling Green Packet Company to and from Bowling Green, Kentucky, compare with the rates made by the Packet Company to intermediate landings?

A. The rates of the Packet Company between Evansville and Bowling Green are lower than to intermediate landings, except those between the two lower locks, where the two sets of figures approximate.

Q. Then the Packet Company charges lower rates to and from Bowling Green, Kentucky, where it comes in competition with the Louisville & Nashville Railroad, than it does to intermediate stations; is that correct?

A. Yes sir; with the exception of those landings near the mouth of the Green River.

Q. There they are short-haul landings?

A. Yes sir.

Q. Are the rates concerning which you have testified as fixing your differentials above these lower long-distance rates of the Packet Company?

A. Yes. They are these lower Evansville-Bowling Green rates that we have used to calculate our own.

Q. And those are the rates that you are seeking to compete with?

A. Yes sir.

Mr. Colston: You may take the witness, Mr. Farrell.

Mr. Farrell: May it please the Court, believing as I do, that this evidence is incompetent, irrelevant and immaterial, and having been assured by the Court that this record will show the evidence to be received by the Court subject to the objections both of myself, on behalf of the Commission, and Mr. Denison, on behalf of the United States, I have no inquiries to make of this witness or any other witness that may be produced and interrogated by counsel for the petitioner.

Judge Mack: Let me ask this question.

By Judge Mack:

Q. Have you the statistics of the traffic for the full year? What caused you to take this one month and then multiply it by twelve?

A. That was because of the lack of time. We could very readily procure that for the entire year by putting a force of men to work on it.

Q. What month did you take?

A. The month of December, 1911.

Q. December, 1911?

A. Yes sir.

Q. Was that traffic particularly heavy or light?

A. No; I think that month will represent within the neighborhood of one-twelfth of our total. Our heaviest months are September, October and November, and it begins to make up again in March and April. In making up these analyses, we usually try to find out which month represents approximately one-twelfth of the total revenue.

691

Judge Hunt: Mr. Farrell, do you contend that all of this testimony has been before the Commission, in substance?

Mr. Farrell: My contention, your Honor, in a few words, is that the merits of this case are not open to review by the Court. Whether this particular matter was before the Commission or not, it is impossible for me or for the Court to say, it seems to me, and that is not the question to be tried by the Court. Whether the Commission, in making the order in question, exceeded its powers, is the question to be tried, and not what the Court would have done on the evidence which was produced before the Commission or any other evidence that the Court would receive, which might be introduced by the parties, attacking the validity of the order.

Does that answer your Honor's question?

Judge Hunt: Yes; I wanted to understand broadly your contention, but my specific question was whether or not you could say, from your familiarity with the evidence before the Commission, this particular line of testimony had been adduced there.

Mr. Farrell: I would not undertake to make any statement about that at all. I stand upon the record itself, and without making any admissions or undertaking to summarize anything that has been done, I just broadly state that my understanding of the law is that the merits of this case are not open to review by the Court; that if this Court finds that the parties have not had a full hearing before the Commission, it will have authority to set aside the order for that reason, and naturally the Commission would have to give them a full hearing, if that were so; but this Court cannot find, from evidence that has not been before the Commission, that the permission to violate the 4th Section of the Act to Regulate Commerce, which was denied by the Commission, should have been allowed, and therefore allow it itself. Neither can it require the Commission to allow it, because that would be, in effect, a control of the administrative judgment of the Commission as to the merits of the case.

Judge Knapp: That seems to be all, Mr. Smith.

Mr. Colston: That is all, your Honor, with that witness, and I offer the record, and a copy of the 4th Section Application, and I understand that they are considered as filed. Is that correct?

Judge Knapp: Yes. That is the same offer you made this morning?

Mr. Colston: Yes.

Mr. Farrell: By the way, Mr. Colston, let me inquire at this point: Of course, we understand that he has the right to offer a certified copy of the 4th Section Application No. 1952, but you have not offered any certified copy as yet, have you?

Mr. Colston: I have stated that I have had a copy certified. It has been sent to Louisville. I have given the clerk a copy of
692 the same paper which I had certified, and I wish it to be understood, when that certified copy is received, that it will be filed, or will now be understood as filed.

Mr. Farrell: Well, I do not object to your offering that certified copy, but I do object to anything except the certified copy being offered and received. I do not believe there will be any objection when it is received.

Mr. Colston: It is understood that when the certified copy is received, it will be all right. It is understood that a certified copy of the record has been turned over to the printer in order to obtain a sufficient number of copies for the use of the Court. I understand that is agreed to?

Mr. Farrell: I understand we have a right to use a certified copy in this case——

Mr. Colston: That is all the testimony we desire to introduce, your Honors.

Mr. Denison: We have no testimony.

(After argument by counsel on behalf of the respective parties.)

Judge Knapp: The Court will take the case under advisement and will now adjourn.

(Whereupon, at 3:45 o'clock P. M., the Court adjourned.)

I hereby certify that I am the stenographer who reported the testimony given before the United States Commerce Court on the 25th day of April, 1913, in the case of Louisville & Nashville Railroad Company, Petitioner, versus United States of America, Respondent, and Interstate Commerce Commission, Intervener, No. 86, and that the foregoing transcript of testimony in said case, consisting of 35 pages, is to the best of my knowledge and belief a true and correct copy of said testimony.

A. F. GALLAGHER.

693 Affidavit of C. B. Compton, referred to in the foregoing Præcipe and filed in the United States Commerce Court on April 25th, 1913, is as follows:

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

The affiant states that he is Freight Traffic Manager of the Louisville & Nashville Railroad Company, petitioner in the above entitled proceeding; that he is familiar with the orders of the Interstate Commerce Commission, complained of in said proceeding, and with the effect which the enforcement of said orders would have upon the business of petitioner, Louisville & Nashville Railroad Company; and that unless a temporary stay or suspension, in whole, of the operation of the orders complained of be allowed petitioner, will, by reason of the enormous penalties provided by the Act to Regulate Commerce for failure to comply with an order of the Interstate Commerce Commission, be compelled to put said orders of the Interstate Commerce Commission into effect on or before May 15th, 1913, and that irreparable damage would consequently ensue to petitioner, Louisville & Nashville Railroad Company, and that the nature of such irreparable damage is as follows, to-wit:

There would be a reduction and loss of revenue to the Louisville & Nashville Railroad Company on business received at Bowling Green, Kentucky, of not less than $20,000.00 per annum.
694 and there would be a loss to the Louisville & Nashville Railroad Company of not less than $11,000.00 per annum on freight forwarded from Bowling Green Kentucky; and, in addition, there would be losses both on inbound and outbound business at stations contiguous to Bowling Green, in, that reductions would result from the requirement that not higher than the sums of the intermediate rates be charged to and from such stations;

And if the reduced rates provided in the orders complained of are put into effect and the revenues of the Louisville & Nashville Railroad Company are accordingly reduced as above set forth, and it should be subsequently determined that said orders are unlawful, or beyond the power of the Commission to make, the Louisville & Nashville Railroad Company would not be able to make collection of the undercharges from the shippers or consignees of the freight, and would be unable, in any way, to repair the damage suffered through the reduction of its rates by said orders.

C. B. COMPTON.

695 Certified copy of the transcript of the stenographer's notes of the testimony and exhibits in the Bowling Green Business Men's Protective Association vs. Louisville & Nashville Railroad Company et al., I. C. C. No. 4310, April 14, 1914, and those portions of Fourth Section Applications numbered 1601 and 1604, filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in Tariff No. A-42; referred to in the foregoing præcipe and filed in the United States Commerce Court on April 29th, 1913.

Interstate Commerce Commission.

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of the transcript of the stenographer's notes of the testimony and of the exhibits introduced at the hearing held April 14, 1914, at Bowling Green, Ky., before Examiner Thurtell in case No. 4310, Bowling Green Business Men's Protective Association against Louisville and Nashville Railroad Company and others and in those portions of Fourth Section Applications Nos. 1601 and 1604, filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in tariff No. A-42 of C. E. Fulton, Agent, which applications ask authority to continue proportional rates on classes and commodities from various points in the states of Illinois, Iowa, Indiana, Wisconsin, Michigan, and Missouri, named in the applications to various Ohio River Crossings, particularly New Albany, Ind., applicable on business destined to Nashville, Tenn., which are lower than the rates concurrently applicable on like traffic from the same points of origin when destined to Bowling Green, Ky., the originals of which are now on file*d* and of record in the office of this Commission.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Commission, this 29th day of March, A. D. 1915.

GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

696 Before the Interstate Commerce Commission.

Docket No. 4310.

BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION OF BOWLING GREEN, KENTUCKY, Complainant,
vs.
LOUIVILLE & NASHVILLE RAILROAD COMPANY et al.

In re Fourth Section Applications Nos. 1601 and 1604.

BOWLING GREEN, KENTUCKY, April 14, 1914, 10 o'clock a. m.

Before Henry Thurtell, Special Examiner.

Met pursuant to notice.

Appearances:

T. W. and R. C. P. Thomas (Neale Bldg., Bowling Green, Kentucky), appearing for Complainant.

William Burger, (Louisville, Kentucky), appearing for Louisville & Nashville Railroad Company, Defendant.

D. P. Connell (# 527 La Salle St. Station, Chicago, Illinois), appearing for New York Central Lines, Defendants.

M. S. Connelly (Gen. Freight Agent, P. C. C. & St. L. Ry. Co., Pittsburgh, Penn.), appearing for the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; Pennsylvania Company and Vandalia Railroad Company, Defendants.

697 C. B. Cardy and F. E. Webster (# 724 McCormick Bldg., Chicago, Illinois), appearing for the Chicago & Eastern Illinois Railroad Company, defendant.

C. E. Fulton, appearing for the Chicago & Ohio River Lines.

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698 *Index of Witnesses.*

Page.
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Index of Exhibits.

Page.
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699 *Proceedings.*

Examiner Thurtell: The Interstate Commerce Commission has set for hearing at this time and place Docket 4310, Bowling Green Business Men's Protective Association, Bowling Green, Kentucky,

against the Louisville & Nashville Railroad Company and others. The order reopening the case and defining the limits in which it is reopened, is as follows:

It is ordered, That this case be reopened for further hearing respecting the reasonableness and lawfulness of said proportional rates for the transportation of traffic from said points of origin to the Ohio River, which are less when such traffic is destined to Nashville, Tennessee, and certain other points, than when such traffic is destined to Bowling Green, Kentucky.

And the Commission has set down for hearing in connection therewith that portion of Fourth Section Application Nos. 1601 and 1604 filed by C. E. Fulton, Agent, on behalf of carriers participating in rates named in tariff No. A-42 of C. E. Fulton, Agent, which asks authority to continue proportional rates on classes and commodities from various points in the States of Illinois, Iowa, Indiana, Wisconsin, Michigan and Missouri, named in the applications to various Ohio River crossings, particularly New Albany, Indiana, applicable on business destined to Nashville, Tennessee, which are lower than the rates concurrently applicable on like traffic from the same points of origin when destined to Bowling Green, Kentucky.

If agreeable to counsel present, we will take up first the order of the Commission reopening the case and the particular feature of the case which is to be reopened, namely, the reasonableness and lawfulness of the practice of applying from certain points in Central Freight Association territory to the Ohio River crossings proportional rates on traffic when destined to Nashville, which are
700 lower than the rates applicable on like traffic destined to Bowling Green. On that feature of the case, the complainant will have the affirmative, and make such showing or statements as may be. In regard to the Fourth Section feature of the case, I understand that the railroads have the affirmative.

Mr. Thomas: Mr. Examiner, in so far as the reopening of the case wherein the Bowling Green Business Men's Protective Association is complainant against the various railroads set forth in their complaint heretofore filed, known as 4310, I. C. C. Docket, the complainants are willing to submit that issue upon the evidence already offered in that case, and they desire to offer no further evidence as to the reasonableness of this proportional favor granted to Nashville, Tennessee, as we think that that evidence in that case demonstrates amply that we are entitled to the Nashville basis complete, as under the order of the Commission we have Nashville rates on traffic destined from the East or to the East, to and from Bowling Green, while we do not have the Nashville rates destined to or from certain points named in the Central Freight Association territory, like Chicago, Indianapolis and certain other named points,—South Bend is one of them—and other points in there.

We are ready to show that we do receive goods and ship goods to and from Chicago, Indianapolis, South Bend and various other points in this Central Freight Association territory when the ques-

tion comes up on the application of the roads to be relieved from the application of the Fourth Section.

Examiner Thurtell: Then we understand that you are ready to submit your case in so far as the order of the Commission reopening the case is concerned, but you desire to be heard in opposition to the granting of the application 1604, which is the main one under consideration today.

Mr. Thomas: That is correct.

Examiner Thurtell: Very well.

Mr. Cardy: That practically leaves nothing for the carriers
701 to do on the reopening of the case, because, as I understand it, that is merely a request submitting their case on the former evidence which has been passed upon by the Commission in 4310, and they are merely objecting to certain propositions which might be raised under the Fourth Section Application, if I am correct.

Mr. Thomas: May it please the Commission, I think that the letter from Commissioner Meyer, dated December 23, 1910, to Mr. C. B. Compton, Freight Traffic Manager of the Louisville & Nashville Railroad Company, expresses the opinion that the practice indulged in indicated a violation of Section 4 of the Act to Regulate Commerce, based on the evidence which was already in. Now, the question is up, whether the application to be relieved from that section shall be granted, and, as I understand, the Commission has ordered a hearing on that in connection with the evidence that is already in in case 4310.

Examiner Thurtell: Yes.

Mr. Cardy: They should be considered together.

Examiner Thurtell: That is correct. That being the understanding then, we will proceed with the consideration of the Fourth Section Application 1601, and in that the railways will have the affirmative.

Mr. Connell: Mr. Examiner, is it the understanding that the carriers will at this time proceed to put in all of the testimony in justification of this Fourth Section Application, or only such as relates to the rates applicable to Nashville, versus the rates applicable on traffic to Bowling Green?

Examiner Thurtell: We will have to confine ourselves exactly to the call, and the call puts the carriers on notice that they shall at this time make such defense as may be necessary concerning the practice of applying lower proportional rates to the Ohio River crossings on traffic destined to Nashville than the rates applicable on like traffic when destined to Bowling Green, so we are confined to those two points. It is not a general application.

702 Mr. Connell: I see.

Mr. Fulton: Mr. Examiner, Mr. Fulton's tariffs covered by Fourth Section Application No. 1604, is our tariff A-43 instead of A-42 as mentioned by you. I thought it would be proper to make that explanation so that your record in the future would be clear.

Examiner Thurtell: Yes, sir.

F. E. WEBSTER was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Cardy: State your full name.
Mr. Webster: F. E. Webster.
Mr. Cardy: What is your official connection, Mr. Webster, with the Chicago & Eastern Illinois Railroad?
Mr. Webster: Chief of the Tariff Bureau.
Mr. Cardy: How long have you been connected with the traffic department of the Chicago & Eastern Illinois?
Mr. Webster: Nearly ten years.
Mr. Cardy: During that period of service, were you associated with any other railroad besides the Chicago & Eastern Illinois Railroad?
Mr. Webster: With the Illinois Traction and the St. Louis & San Francisco Railroad.
Mr. Cardy: Mr. Webster, I will ask you to state whether or not you are familiar with the adjustment of rates from Chicago and other points to the Ohio River and Nashville, to the Southwest or Southeast.
Mr. Webster: I am.
Mr. Cardy: Have you prepared a statement showing proportional rates from Chicago, that is, from Chicago to the Ohio River and the territory where these rates apply?
703 Mr. Webster: I have.
Mr. Cardy: Will you just explain——
Mr. Webster: I have prepared here and will submit as Webster's Exhibit No. 1, a blue print of the adjustment of rates from the Eastern markets versus from Chicago and St. Louis to Nashville, Bowling Green and the Southeastern territory.
Mr. Cardy: I will offer that statement as Webster Exhibit No. 1.

(The statement so offered and identified was received in evidence, and thereupon marked "Webster Exhibit No. 1, received in evidence April 14, 1914," and is attached hereto.)

Mr. Cardy: Just go ahead and explain the object of that exhibit.
Mr. Webster: This exhibit will show by an examination of it that today the rates to Bowling Green from the Chicago market, versus the rates from the Eastern markets and the St. Louis market are lower from the Chicago market than from the other two markets. I want to say that there is a relation existing between the rates from the East and the West, and that this may be understood—it perhaps will be necessary for me to give somewhat of a history, a very short one, of the adjustment which brings out or leads up to the present proportional rates from Chicago to the Ohio River, as applied on Nashville traffic.
Mr. Cardy: Mr. Webster, just before we get to that, give us, so we will have it in the record, the rates that apply at Nashville, and the rates that apply at Bowling Green.
Mr. Webster: The rates that apply from Chicago to the Ohio River

on traffic to Bowling Green, Kentucky, are the following scale, governed by the Official Classification:

40, 34, 25, 17, 15 and 12. The proportional rates as applied to north bank Ohio River crossings, Jeffersonville, New Albany and Evansville, are the following scale of rates, governed by Southern Classification:

704 35, 30, 22, 15, 13 and 10.

Mr. Cardy: Just go ahead and tell us what brings about the present proportional scale of 35 cents to Nashville and other points southeast.

Mr. Webster: That there may be no misunderstanding of our attitude, the Chicago & Eastern Illinois Railroad, as a carrier north of the Ohio River, operating from Chicago territory, as to the necessity for the proportional rates as published to the Ohio River for Southeastern territory, and to show the consistent attitude which we have tried to maintain in connection with the Southern, or what were formerly known as the "Green Line carriers," in maintaining the relative adjustment of rates to the Ohio River, that is, such points as Cincinnati, Jeffersonville, New Albany, Evansville and Cairo from Chicago territory, and such other points as are described in Agent C. E. Fulton's tariff No. 104 series, present I. C. C. No. A-82, it is necessary that the following be a matter of record, that is, in my judgment:

The history of the Southeastern adjustment is a somewhat involved one, and when I say this, I mean involved in so far as the rates from the East having influence on the rates from the West are concerned.

Prior to the year 1878 the rates from the East versus the rates from the West to Southeastern points were in a chaotic condition.

The first definite record was recorded in pages 114 and 115 of volume five, Southern Railway & Steamship Association, and was the result of a conference held at the Kimball House, Atlanta, Georgia, November 26, 1878. At this meeting what was then known as the Green Line Committee, that is, the lines operating from Chicago and St. Louis into Nashville, Chattanooga and those southeastern points, in connection with the Eastern railroad and steamship lines, that is, the Old Dominion and the Merchants and Miners, Seaboard Air Line, Atlantic Coast Line, in connection with such steamship lines operating through Savannah, agreed upon certain

705 differentials from Western points on traffic operating via the Baltimore gateway as against the Ohio River routes.

In 1880 at a session of the Rate Committee of the Southern Railway & Steamship Association, which was the subsequent organization of the Green Line Committee, and the Eastern Rail and steamship lines, held in New York August 11 and 12, 1880, a Mr. Pope, who was acting in the interests of the Eastern rail and steamship lines, submitted a report as Chairman of the Eastern Sub-committee, and a Colonel Dorsey, acting as Chairman of what was known as the Western Sub-committee for the Western lines, agreed upon what was the first authentic method of constructing rates from the East versus the West. The inter-relation of the rates can be better shown by giving the basis. The rates from the East—Baltimore was taken as the

eastern basing point, and Atlanta as the southern basing point. This represented 100 per cent. New York was 106 per cent of the Baltimore-Atlanta rates; Richmond, or the Virginia cities we will call that 84 per cent of the Baltimore-Atlanta rates; Louisville 100 per cent of the Baltimore-Atlanta rates, on numbered classes, including Class A, and 94 per cent on other lettered classes. I might state right here that the reason why 94 per cent was used on the lettered classes was because most of the western products, such as grain and grain products, were classified under the lettered classes, and there had been, and was at that time, a controversy as to what the rate should be through the Baltimore gateway from the west territory as against the Ohio River gateways at Louisville, and the position of the lines operating south from the Louisville gateway was, that the rates from Louisville would not be higher than the rates from Baltimore to Atlanta into Southeastern territory.

At this time the Southern lines, acting in conjunction with the lines north of the Ohio River, assumed control of the rates. They made the rates from Chicago 130 per cent of the Louisville-Atlanta rates, and the rate from St. Louis and East St. Louis was made
706 118 per cent of the Louisville-Atlanta rate. At the same time the Memphis adjustment was brought into the controversy, and the rates from Memphis to Atlanta were 96 per cent of the Louisville-Atlanta rates.

As to the Southern points, Atlanta was treated as a base point in every instance, and Rome and Dalton and other points were grouped with Atlanta, Augusta, Georgia, maintained certain differentials or percentages lower than the Atlanta rates from the East.

This adjustment did not prove satisfactory to the interested carriers, and in 1882 the base point was changed from Baltimore to New York, or, in other words, the New York-Atlanta rate was the basis for making rates from eastern points to southeastern or southern territoy. The other eastern points, such as Baltimore, Washington and the Virginia cities, were made certain differentials lower than the New York rates. The lines still operating from Louisville contended that those former rates ought to be the rates as applied from Louisville on classes, that is on numbered classes, including Class A, and would still continue to be 94 per cent on lettered classes below Class A.

Between 1882 and 1896 many changes were made in the rates from the East and West to the Southeastern territory, brought about through the active and keen competition of the Eastern lines with the Western lines. This resulted in a number of violent rate wars, so that when, in September, 1896, certain reductions were made by the Seaboard Air Line, their effect was so disastrous as to compel some of the carriers to seek the courts to restrain the Seaboard Air Line and those lines which met the Seaboard Air Line competition to restore the rates to the basis in effect prior to the reduction.

The United States Court at Atlanta in 1896 issued a mandatory order compelling the Seaboard Air Line to restore these rates.

The next material change which will have to do with the establishment of the proportional rates under attack here was brought about

along in February, 1905. This reduction in the rates from
707 the East was not voluntary on the part of the Eastern and Southern carriers, but was forced upon the carriers by the Railroad Commission of Georgia as the result of a complaint filed by the Atlanta Freight Bureau, March 25, 1904. This complaint asked the Georgia Commission to go to the Interstate Commerce Commission to secure better rates for Atlanta from the East to the Southeast.

It seems that the Georgia Commission were not able to do this, and that in disposing of the complaint of the Atlanta people they promulgated that order, Circular No. 301, which made a drastic reduction in the intrastate rates on a large number of important commodities between Atlanta and other Georgia stations, such as Savannah and Augusta. In doing this, they thereby attempted to control and force a reduction in the interstate rates.

The Southern carriers secured a temporary injunction against this order of the Commission. During the reduction a compromise was arranged between counsel for the carriers and the State of Georgia, which resulted in the Eastern carriers finding it necessary to reduce their rates from the East to Atlanta. It naturally followed that in order to make the parity or the relative adjustment of rates to the South, that all other Southeastern points were affected.

This reduction became effective February 1, 1905, and, as it was the Baltimore-Atlanta rate which made the rates from Louisville, the reduction in the rates, effective January 1, 1905, was as follows:

The old basis, first class, $1.07; second class, 92, third class 81, fourth class 68, fifth class 56, sixth class 46, Class A 34; Class B, 45; Class C, 37; Class D, 36; Class E, 55; Class H, 65; Class F, 72.

Mr. Thomas: May I interrupt the witness to ask where from?

Mr. Webster: That was from Baltimore to Atlanta, February 1, 1905——

Examiner Thurtell: That became the rate from Louisville?

708 Mr. Webster: They became the rates from Louisville on all of the numbered classes, including Class A, with 94 per cent of the other lettered classes which had been applied as the basis of the rates from Louisville.

Mr. Thomas: From Louisville to Atlanta?

Mr. Webster: Atlanta, yes, sir.

Mr. Thomas: Not to Nashville?

Mr. Webster: Not to Nashville. I will get to that later. Effective February 1, 1905, rates were reduced, and I will just give you the classes right across there: 98, 87, 78, 63, 52, 41, 34, 45, 37, 36, 55, 57, 72, or a reduction in the first six classes as follows: 9, 5, 3, 5, 4, 5. This reduction automatically followed from Chicago, St. Louis and the Ohio River crossings.

At the time that this reduction was made from the East there were being carried on considerable negotiations between the carriers—by that I mean the St. Louis-Ohio River carriers, such as the Illinois Central, the M. & O., L. & N., Southern Railway and Frisco (C. & E. I.) and the Merchants Exchange of St. Louis, negotiations for reductions in rates from St. Louis to the Southeast. At the same time the Chicago Association of Commerce were asking the Chicago-

Ohio River-Southeastern lines—by that I mean the Illinois Central, Frisco and perhaps some of the other lines, for a reduction in the rates from Chicago, and the reduction of 9 cents which followed from the East they claimed did not give them the relief of which they sought. In other words, they felt they should have a better adjustment, or a relative adjustment from Chicago and St. Louis to the Southeastern territory than was maintained from Baltimore and from New York.

About this time at a meeting in New York of the executive officers of the St. Louis-Ohio River lines—and right here I want to make it plain that the St. Louis-Ohio River lines should not be confused with the Chicago-Ohio River lines, and in order that they may
709 not be confused, I will name some of them: All of them will be found as members of the Central Freight Association: Illinois Central, Frisco, Iron Mountain, Southern, L. & N. The Chicago-Ohio River lines—when I speak of the Chicago-Ohio River lines I refer to them as the standard lines, I mean such lines as the Monon, the Pennsylvania, the New York Central, and when I refer to the Chicago-Ohio River Southeastern lines I mean the Illinois Central and the St. Louis & San Francisco (C. & E. I.).

About this time at a meeting in New York——

Mr. Cardy: Right there, Mr. Webster, are the Illinois Central and the Frisco, or the C. & E. I., controlled by the Frisco, the only roads that have a line north and south of the Ohio River?

Mr. Webster: At the time this adjustment was made, the C. & E. I. Railroad was controlled by the St. Louis & San Francisco, or what was known as the Frisco interests. In other words, they dictated our policies and made our rates for us.

Mr. Connell: You did not answer Mr. Cardy's question.

Mr. Webster: I answered his question.

Mr. Cardy: Yes. In other words, these were the only two roads that had lines both north and south of the Ohio River, operating?

Mr. Webster: They were the only two railroads that served the Chicago market with their own rails into the Southeast.

About this time, at a meeting in New York of the executive officers of the St. Louis-Ohio River lines, a recommendation was made by those lines as follows:

"Recommended, An adjustment of rates from East St. Louis to Southeastern territory, based on the following figures higher than the rates from Cairo:

1	2	3	4	5	6
23	19	17	12	10	8"

710 This made a reduction in the differentials which were at that time used in establishing the rates to the Southeast of 5, 4, 3, 2, 2, 2.

When these lines made the recommendation in New York, they felt that it would have a serious effect on the rates from Chicago, and a committee was appointed to confer with the Chicago-Ohio River

standard lines, that is, those lines having their termini at the Ohio River, this committee to consider with them the question of the reduction of rates from Chicago to Southeastern territory, and at a meeting held at the Auditorium Hote-, Chicago, Wednesday, April 19, 1905, of which Mr. T. C. Powell, of the Southern Railway, acted as chairman of the Joint Conference and Mr. Dickinson, of the Missouri Pacific, acted as chairman of the Committee of St. Louis-Ohio River lines, stated that he could best give the reasons for calling the meeting as set forth in the recommendation at the New York meeting, which I have quoted in the record above.

At this meeting considerable spirited discussion took place, and the representatives of the Chicago-Ohio River lines withdrew to confer among themselves as to what had best be done to preserve the situation; and a resolution of the Chicago-Ohio River standard lines was submitted to the joint meeting as follows:

"Whereas, the contention of the Chicago and St. Louis Commercial Trade for a reduction in rates for the Southeastern territory that will have some proper relation to the rates from New York to the same territory, and whereas, in answer to this demand, it is proposed to make a reduction from East St. Louis to the Southeastern territory based on 5, 4, 3, 2, 2, 2 cents per 100 pounds, all of which is to come out of the proportion north of the Ohio River, and it is now proposed to make corresponding reduction from Chicago, all to come out of north of the Ohio River proportion, and whereas, in our judgment this reduction is only begging with the situation and does not answer the purposes of the demand for reduction, there-

711 fore, Be It Resolved, that we declare as a principle that the rates from Chicago be not greater than the rates from New York to what is called the Green Line Territory, and until such arrangement is made we protest against the proposed reduction from East St. Louis being made operative.

"Be it Further Resolved: That it is the sense of the Chicago-Ohio River lines that they are in favor of making any reasonably fair reduction in rates from their territory to the territory of the Southeast, on the condition that the same rates be divided between the carriers north and south of the Ohio River on an equitable basis of divisions.

"The representatives of the Illinois Central and the Frisco request to be put on record as not voting on the proposition submitted by the Chicago-Ohio River lines.

"The St. Louis-Ohio River Committee received the report of the Chicago-Ohio River Committee and stated that the same would be submitted to the Executive officers of the St. Louis-Ohio River lines." In other words, just at that time they were not certain that they were going to carry out the recommendation that was made at the New York meeting, they wanted to give it further consideration.

This report was to be submitted at a general meeting to be called at an early date, it being understood by the Chicago-Ohio River standard lines that the St. Louis-Ohio River lines would advise them as to what action they finally decided to take.

I have a copy of the proceedings of that meeting that I can submit as an exhibit if you care to have it, Mr. Examiner.

Examiner Thurtell: You have gone into that so fully that possibly it would be as well to put that in.

Mr. Webster: I have only just got the one copy in my file.

(The document so offered and identified was received in evidence, and thereupon marked "Webster Exhibit No. 2, received in
712 evidence April 14, 1914," and is attached hereto.)

Mr. Webster: This exhibit is intended to show that the lines operating the proportional rates from Chicago to the New Albany-Jeffersonville gateway opposed the reduction from the 40-cent scale to the 35-cent scale, and that they considered at that time that the proposed reduction would not satisfy the Chicago interests.

On May 5, 1905, about thirty days, perhaps not quite that, after the conference between the Chicago-Ohio River and St. Louis-Ohio River lines, Mr. J. F. Tucker, who was chairman of the Central Freight Association lines, acting for the Chicago-Ohio River standard lines, received a wire from Vice-President Harrahan, of the Illinois Central, dated Washington, which read as follows:

"In accordance with action taken by companies represented at meeting New York April 11th, and subsequently concurred in by Missouri Pacific, Illinois Central, will, on fifteenth inst. establish following proportional rates from St. Louis and East St. Louis to Cairo and Evansville in construction of through rates from these cities to Southeastern territory, namely, first-class, twenty-three; second, nineteen; third, seventeen; fourth, twelve; fifth, ten; sixth, eight. Joint Powell, Russell, Davidson, Dickinson, Clarke, Tucker, Frink, Parrott, Washburn.

(Signed) J. T. HARAHAN."

On May 6th a joint letter was addressed to Mr. C. E. Fulton, chairman of the Chicago and Ohio River Committee, by the Vice-President of the Illinois Central and the President of the C. & E. I. Railroad. This letter was as follows:

"The undersigned railways are anxious to have a conference with interested roads to discuss further the question of reducing the rates from Chicago to the several Ohio River crossings on miscellaneous classes in order to accomplish the same or similar reduction to Southeastern territory, as made from St. Louis."

713 The two lines who controlled the situation from St. Louis to the Southeast were the two lines which came to the Chicago-Ohio River standard lines to make a reduction from Chicago to the Ohio River, and said to those lines: "You have got to take those reductions out of your proportion north."

A meeting was held on May 9, 1909, but nothing was accomplished, a further meeting being called for Friday, May 12, 1905, and at this conference opposition developed as to any reduction from Chicago, and, after considerable discussion, the representative of the Illinois Central Railroad remarked as follows:

"I do not know your procedure in this office, but we would recommend that proportional rates from Chicago to Ohio River on Southeastern business be reduced, the first six classes May 16th, 5, 4, 3, 2,

2, 2, this being the same reduction as has been made from St. Louis on the 15th."

The representative of the C. & E. I. Railroad (Frisco) seconded this motion. The recommendation or motion was voted down by practically all of the interested carriers, and it was then stated by the Illinois Central representative as follows:

"It is evident that we cannot reach unanimous idea, and the Illinois Central will give notice now that effective 16th, they will put in force recommendation just made."

The representative of the Frisco stated:

"The Frisco gives the same notice."

The two lines that had their rails north and south of the Ohio River and get the long haul on Chicago traffic, forced the situation on the lines operating from Chicago to the Ohio River gateway proper.

"The Frisco gives same notice. I would like to have it understood we are in no way committed to this, but we feel St. Louis having made reduction we cannot, as Chicago line, afford to place
714 ourselves in position to refuse meeting it."

Reduced rates were published from St. Louis, effective May 15th, and from Chicago effective May 16, 1905. The rates from St. Louis and East St. Louis at this time being made the first six classes, governed by Southern Classification, the following differentials over the Cairo-Evansville rate: 28, 23, 20, 14, 12 and 10.

Chicago, the following differentials over St. Louis: 12, 11, 5, 3, 3, 2; resulting in the following rates, Chicago to the Ohio River, governed by Southern Classification: 40, 34, 25, 17, 15, 12; which were the same figures as the local rates, except that the local rates were governed by the Official Classification.

The rates from Indianapolis at this time being the following differentials under the rates from Chicago: 15, 12, 5, ½, 4½, 5½, 4; resulting in the following rates, governed by Southern Classification: 25, 22, 19.5, 12.5, 9.5, 8. And when the differential from St. Louis was reduced to Cairo and Evansville, 5, 4, 3, 2, 2, 2, making the differential St. Louis and East St. Louis over Cairo and Evansville: 23, 19, 17, 12, 10, 8; and upon the action being taken by the representatives of the Frisco and Illinois Central, this followed to Chicago and reduced the Chicago rates from 40, 34, 25, 17, 15, and 12, to 35, 30, 22, 15, 13, 10 the present proportional rates under attack here. Right here I think I can say that this is a situation that the Chicago-Jeffersonville-New Albany lines had forced right down their throats. In other words either get out of the Chicago traffic or meet our situation, is what we told them. Of course they could not very well go out of the traffic, and the result is, the present proportional rates applied to Jeffersonville and New Albany on Nashville or Southeastern traffic.

Mr. Cardy: Right there, Mr. Webster, does traffic for Nashville via the C. & E. I. and the Illinois Central, move through Bowling Green?

715 Mr. Webster: It does not. It don't go within quite a number of miles of Bowling Green.

This Nashville adjustment, I want to say, is brought about by the competition of markets. The adjustment from Memphis, from St. Louis and from Chicago to Nashville, is an adjustment based on market competition. There is also some carrier competition involved. I might say that the N., C. & St. L. Railroad in making rates from Paducah to Nashville have placed Nashville in what was then known as the Green Line territory, and the adjustment to Nashville today is practically the same from St. Louis and Chicago as the adjustment to Birmingham, Montgomery and Atlanta.

Take, for instance, the first class scale from Memphis, Tennessee, is 50 cents. From St. Louis and East St. Louis to Nashville the first class scale is 38, plus 23, or 61 cents. From Chicago it is 35 plus 38, or 73 cents. You can see how closely interwoven are the interests of those three markets into Nashville.

Bowling Green has not that competition. Bowling Green has a 92-cent rate from St. Louis, they — a 91-cent rate from New York; they have a 78-cent rate from Chicago. Bowling Green has nothing to object to today on the Chicago adjustment. Their objection, it seems to me, will place the Chicago-Jeffersonville-New Albany lines in the position of saying whether or not they want to meet the competition of the Illinois Central and Frisco. They can correct the situation by removing those proportional rates for Jeffersonville and New Albany, but I don't think they would want to do it. I don't think the Commission wants them to do it, because they want to serve the public.

Examiner Thurtell: Let me see where we are drifting. So far as the Fourth Section application is concerned, and that portion of it which was set for hearing, it would be open for the purpose of affording the carriers north of the Ohio River an opportunity for the
defense of the practice of carrying lower proportional rates
716 to Louisville, Jeffersonville and New Albany, on business going to Nashville, than are applicable upon the same kind of business when destined to Bowling Green.

Now then, you assert here that if the carriers operating through Jeffersonville and Louisville were to accept proportional rates which they have applicable by that gateway——

Mr. Webster: On Nashville traffic.

Examiner Thurtell: On Nashville traffic, that there would be no violation of the Fourth Section as between Bowling Green and Nashville, by that gateway, because the traffic would not be routed through Bowling Green to Nashville, but the Nashville rates would remain exactly as they are.

Mr. Webster: Through Evansville.

Examiner Thurtell: For traffic coming through Evansville?

Mr. Webster: Yes, sir.

Examiner Thurtell: We must not get away from this statement of the case as made by the Commission in reopening this case: "That this case be reopened for further hearing respecting the reasonableness and lawfulness of said proportional rates for the transportation of traffic from said points of origin to the Ohio River,

which are less when such traffic is destined to Nashville, Tennessee, and certain other points, than when such traffic is destined to Bowling Green, Kentucky."

That does not consider, necessarily, any Fourth Section violation. That is a matter of discrimination under the Third Section, and the carriers—not only the carriers operating through the Jeffersonville and Louisville gateway, but the carriers operating through the other gateways, are put on notice here that they should defend the practice of maintaining larger proportional rates to the Ohio River applicable to one town and not applicable to another, irrespective of the fact that one is or is not intermediate to the other.

717 Mr. Webster: You mean the reasonableness of the rate is attacked because of discrimination as between Nashville and Bowling Green.

Mr. Thurtell: Yes sir. Counsel has said that the carriers did not probably care to make any defense concerning that practice here outlined as to this Fourth Section Application. Now, I do not want to get away from the hearing as outlined by the Commission, and I want you to make clear such defense as you have for the maintaining of proportional rates up to any of the Ohio River crossings which are less on traffic destined to Nashville than on like traffic destined to Bowling Green.

Mr. Webster: That is brought out in the testiomny that I have just given as to the market competition, that is the adjustment.

Examiner Thurtell: If we are to understand by your passing over this order reopening the case and not putting in any testimony with regard to it, that your rest your case upon the testimony which was produced at the former hearing, all right; but I do not want to get away from the issue as laid out here by the Commission.

Mr. Cardy: I am not familiar with what testimony was introduced at the former hearing, I was not present at that. Of course, we will attempt to justify our rates, that is, the rates to Nashville as compared with the rates to Bowling Green, and account for the Nashville rates on the question of discrimination, if that is the proposition.

Examiner Thurtell: Yes. I just don't want anything overlooked here.

Mr. Cardy: I think that by Mr. Webster's testimony we have offered probably all that we can on the question of discrimination up to this point. The question of the lawfulness of the rate, we might want to put Mr. Webster back on the stand for a few minutes after these other witnesses get through. May I ask that privilege?

Examiner Thurtell: Yes, that was all I cared to state, Mr. Webster. Go on with your statement.

718 Mr. Webster: In connection with the Fourth Section Application, I have got here a diagram of our situation from Chicago to different points on our railroad, and I will say that there is no violation with us except perhaps by the use of the Official Classification in lieu of the Southern Classification in some instances; in other words, a difference of rating which may exist there between the two classifications.

Mr. Connell: Mr. Webster, I think you are getting off the issue here. Isn't that policy of the C. & E. I. the same as it is with the Big Four and the Pennsylvania when you carry traffic from Chicago to Evansville when it is destined to Bowling Green, to apply a higher scale than you do on business destined to Nashville?

Mr. Webster: We do not apply a higher scale. That is what I am just pointing out here. Our first move there is 35 cents, so far as the Fourth Section Application is concerned, unless you mean the 35-cent scale as against the 40-cent scale.

Mr. Connell: Yes.

Mr. Webster: That is the point perhaps you are bringing out there. In that case there is a violation, but remember there is no violation of the Fourth Section because we do not pull Nashville business through Bowling Green, so there is no discrimination with us.

Mr. Cardy: That is all there is involved here.

Examiner Thurtell: You are speaking now for the C. & E. I.?

Mr. Webster: Yes sir, as an intermediate carrier, which has a two-line haul to Jeffersonville and New Albany.

Examiner Thurtell: You are open, however, to the matter as laid out in the order reopening the case, that you are maintaining a lower charge on business up to Evansville when that traffic is destined to one point——

Mr. Webster: As against the other, yes sir.

719 Examiner Thurtell: As against the other.

Mr. Webster: Yes, no question about that. There is just one thing here, before I get away from this: I want to refer to Washburn's tariff I. C. No. 117. On page A-3, this gives a description of the Southeastern territory, or where the competition of the East comes into play with the competition of the West. You will find that it is territory east of the M. & O. Railroad and the Illinois Central to Corinth, and then on and south of the old Memphis & Charleston Railroad to Chattanooga; then on a line east—you might say a direct line from Chattanooga to Knoxville, which brings Nashville and Clarksville into what is called—what we call open territory. In other words, if there are differentials from St. Louis which have been applied in the making of rates to Nashville—in other words, they should be made on the full combination, the same as Bowling Green; but we have no control over the rates from St. Louis to Nashville, therefore we cannot defend that adjustment.

Examiner Thurtell: You mean to say, therefore, you cannot help that adjustment, you are not responsible for that adjustment?

Mr. Webster: We would not attempt to defend it because we do not make it.

Mr. Cardy: I want to reserve the right to ask Mr. Webster a few questions probably a little later on.

Examiner Thurtell: Very well.

720 Cross-examination:

Mr. Thomas: Mr. Webster, I believe you are the representative of the C. & E. I.?

Mr. Webster: That is correct, yes sir.

Mr. Thomas: Does that railroad enter Nashville?

Mr. Webster: No sir.

Mr. Thomas: Does the Illinois Central Railroad enter Nashville?

Mr. Webster: In connection with the N., C. & St. L. through Martin, Tennessee, they do. That is, they handle business. I might say that we, in connection with the L. & N. south of Evansville, handle Nashville business, but we do not enter Nashville proper.

Mr. Thomas: You would handle business to Bowling Green in connection with the L. & N. as far as Evansville?

Mr. Webster: Yes, we could handle it to that point.

Mr. Thomas: I believe you stated that these proportional rates which you are asking to continue were first made effective in the year 1905, is that correct?

Mr. Webster: May 16, 1905.

Mr. Thomas: Were these proportional rates due to a reduction of rates from the East to Atlanta?

Mr. Webster: They were not, no sir.

Mr. Thomas: What then? State it succinctly, without giving all that history.

Mr. Webster: Proportional rates, or, that is rates from Chicago to the Ohio River were reduced by action of the St. Louis-Ohio River lines. The Illinois Central with their rails into the Southeast and the Frisco with their rails into the Southeast, both of them serving the Southeast through the Memphis and Birmingham gateways, and I might say who controlled a good deal of legislation in the Southern Freight Association, between St. Louis and the Ohio River,
721 put through a recommendation to reduce the rates from St. Louis to the Ohio River 5, 4, 3, 2, 2, 2. That naturally made through rates lower by those differences. They then came to the Chicago-Ohio River lines and said: "We want to keep Chicago on a parity with St. Louis in that adjustment. It will be necessary that we reduce from Chicago 5, 4, 3, 2, 2, 2," and they did so to Evansville, Cairo and Thebes only. They could control no other gateways. The result was, that the Pan Handle, Big Four and Monon, C. & O., or those lines operating through Jeffersonville, New Albany and Cincinnati, had to apply the same proportional rates to those gateways, or go out of the Chicago traffic.

Mr. Thomas: Regardless of how it was recommended, who put it into effect? What influence brought about the establishment of these proportional rates from these points in Central Freight Association territory, the fact that rates had been reduced from the East to Atlanta?

Mr. Webster: No, because that reduction followed at the time that rates were reduced from the East; in other words, on February 1, 1905, rates from the East were reduced nine cents, first-class. That immediately followed from Louisville, St. Louis and Chicago, and when the five-cent reduction came along in May, that made a 14-cent reduction as against, of course, these old rates in effect.

Mr. Thomas: Then there was no relation between the establish-

ment of these proportional rates and the reduction of rates on traffic from the East to Atlanta?

Mr. Webster: Yes sir, in this way: The Chicago and the St. Louis interests there are all the time competing with the markets of the East, like New York and Baltimore. We must have a better adjustment. It was primarily the influence of the markets from the East that brought down the rates from Chicago and from St. Louis.

Mr. Thomas: Prior to the reduction of the rates from the East to these points you mentioned, local rates were charged from points north of the Ohio River on business destined south, were they not, Ohio River Crossings?

722 Mr. Webster: No, they could not be called local rates, because they were governed by Southern classification. They were proportional rates I will say that applied to a certain described territory, as I understand it.

Mr. Thomas: But the scale was the same scale?

Mr. Webster: The figures happened to be the same.

Mr. Thomas: The scale was the same scale as is now applied on traffic destined to points in interior Kentucky?

Mr. Webster: But the rates are not the same.

Mr. Thomas: The scale was the same, wasn't it?

Mr. Webster: The figures, not the scale——

Mr. Thomas: Let us get at the substance of the thing and cut out technicalities.

Mr. Webster: I will say that the figures were the same on the classes.

Examiner Thurtell: But we understand that——

Mr. Webster: The classification was different.

Examiner Thurtell: It was the Official?

Mr. Webster: The Official Classification applied on Bowling Green, while the Southern Classification applied on Nashville.

Examiner Thurtell: The difference being this, that Class 1, for instance, in the Official Classification applies to a certain group of articles, and Class No. 1 in the Southern to an entirely—not entirely, but to a different group of articles?

Mr. Webster: In some instances. In some instances the class would be first class in Southern Classification and second class in Official.

Mr. Thomas: There was no reduction in the rates from the East to Nashville in 1905, was there?

Mr. Webster: I don't think that I have got the figures to Nash-
ville in 1905, but I would presume that if the lines operating
723 from the East made reductions to Chattanooga, Birmingham and Atlanta, that they could not very well fail to make reductions to Nashville. I have not got those figures before me.

Mr. Thomas: Don't you know it to be a fact that the 91-cent scale of rates from the East to Nashville was in effect in 1905?

Mr. Webster: No sir.

Mr. Thomas: And had been in effect for many years?

Mr. Webster: I don't know.

Mr. Thomas: Do you know it was not in effect?

Mr. Webster: I would not answer you yes or no.

Mr. Thomas: You don't know, then?

Mr. Webster: That is my answer, I infer.

Mr. Thomas: You don't know?

Mr. Webster: I think you have my answer.

Mr. Thomas: The point is, that it was shown in the case of the Chamber of Commerce of Chattanooga against the Southern Railroad Company, 10 I. C. C. Reports, page 117, that this 91-cent scale had been in force in Nashville for many years, and was in force prior to 1905.

Mr. Webster: That is possibly true.

Mr. Thomas: So if Nashville then—if my statement is true about that, Nashville did not participate in the reduction of the rates from the East to Atlanta?

Mr. Webster: Not the nine-cent reduction, but that is not saying that the complainants, the Chicago Board of Trade and the St. Louis Merchants Exchange, did not feel that the adjustment of rates from the East to Nashville was unfair to the markets of Chicago and St. Louis.

Mr. Thomas: Would you say then that the establishment of proportional rates north of the river on business destined to Nashville was merely to keep Nashville on a basis with Chattanooga
724 and Atlanta?

Mr. Webster: I pointed that out in my evidence as to the action of the Ohio River and Southern Freight Association lines. In other words, the Illinois Central says that we will make our rates——

Mr. Thomas: I don't wish to go into that.

Mr. Webster: That is the only way I can answer your question.

Mr. Thomas: Don't your answer then follow from your previous answer?

Mr. Webster: I won't answer yes, I will say they controlled the situation, and that when they said we will make the Green Line territory, Nashville being brought in Green Line territory, a 23-cent differential from St. Louis to Cairo and Evansville, and the L. & N. Railroad says: "Our rate south of Evansville is 38 cents," you add the two together and you cannot get away from your through rate.

Mr. Thomas: Is it not true also, then, that the change in the rates to Nashville in these proportional rates, was not necessitated by any new condition as to the rates from the East to Nashville?

Mr. Webster: I was not the traffic officer in charge of the Frisco or the Illinois Central at that time, and I am not familiar with the conditions which justified, in the judgment of those gentlemen, the reduction.

Mr. Thomas: Of course, I don't know what is on file with the Commission in respect to these matters. We will ask you to furnish the Commission, or to furnish in the form of an exhibit, all proportional rates used north of the river from Chicago to Indianapolis and the principal points, and also file copy of the tariff showing a list of the important markets which take Chicago rates, Indianapolis rates, and so forth.

Mr. Webster: That is all a matter of record with the Commission now.

725 Mr. Thomas: They are all there now?

Mr. Webster: Yes, they are all on file with the Commission.

Mr. Thomas: Will you furnish that information to me?

Mr. Webster: What?

Mr. Thomas: These things I have just asked for.

Mr. Webster: I hardly know just what you want.

Mr. Thomas: These tariffs.

Mr. Webster: We will give you a copy of any tariff you ask us for, glad to furnish them to you, but as to filing any statement, that is up to you.

Mr. Thomas: Not a statement, I want the tariffs.

Examiner Thurtell: Mr. Thomas, isn't what you want a copy of Mr. Fulton's tariff showing the proportional rates from various points in Central Freight Association territory, including Chicago and Indianapolis, up to these various Ohio River crossings? I assume that it is.

Mr. Webster: I can furnish that.

Mr. Thomas: I think that I could easily get that from my answer to my question. These proportional rates established in 1905 apply to Montgomery, Alabama, Mobile, Alabama, Meridian, Mississippi.

Mr. Webster: They did not apply to Meridian and they did not apply to Mobile. They applied to Montgomery, those rates.

Mr. Thomas: Had the rates from the East been reduced to Montgomery, Birmingham and Mobile in 1905?

Mr. Webster: To Birmingham and Montgomery they were reduced, but I don't know what the adjustment was to Mobile, because that is a pro-rating point from the East, the same as we call it from the West, and the change in the Mobile rate did not naturally follow in the normal adjustment, anything which is made at Atlanta or Birmingham.

Mr. Thomas: Were the rates reduced at the same time that
726 they were reduced to Atlanta from the East, reduced to Montgomery and Birmingham?

Mr. Webster: It naturally followed, yes sir.

Mr. Thomas: Was it part of the same reduction, or did it follow in the re-adjustment?

Mr. Webster: As I understand, it followed to all southeastern territory. I did not take part in those cases, in every case, but that is a matter of record with the Commission.

Mr. Thomas: Do you know whether these proportional rates which you are asking to continue, apply to any points in Kentucky?

Mr. Webster: I think probably there are a few points over in Western Kentucky or Western Central Kentucky, but there again you run into the influence of the competition of the Illinois Central Railroad.

Mr. Thomas: Can you name a point to which they apply in Kentucky?

Mr. Webster: I can, I think: I think this tariff here names them. Middlesborough, Kentucky, is one. Fonde is another one.

Mr. Thomas: Middlesborough is — eastern Kentucky, is it not?

Mr. Webster: Middlesboro, b-o-r-o, is, but I don't know whether Middles b-o-r-o-u-g-h is.

Mr. Thomas: That is the same one.

Mr. Webster: They have got it here, b-o-r-o-u-g-h.

Mr. Thomas: Where is Fonde, Kentucky?

Mr. Webster: I don't know Fonde.

Mr. Thomas: The only two points you know are Middlesboro and Fonde?

Mr. Webster: Those are the only two points I found in my tariff. I have not got all the supplements.

Mr. Thomas: Do you know what railroad they are on?

Mr. Webster: No, I haven't checked them up.

727 Mr. Thomas: Middlesboro is in Eastern Kentucky, is it, or Western?

Mr. Webster: I don't know, but I am telling you in Western central Kentucky the Illinois Central makes the rates down there based on the 35-cent scale.

Mr. Thomas: But Middlesboro is not on the Illinois Central?

Mr. Webster: No, I don't know, I tell you.

Mr. Thomas: It is not on the C. & E. I. either?

Mr. Webster: If it was, I would have told you long ago. I think I know my own railroad.

Mr. Thomas: We may all know these things, but we have got to get them in the record.

Mr. Webster: Go ahead, go to it.

Examiner Thurtell: You don't know of any reason then why Middlesboro and Fonde are given that proportional rate?

Mr. Webster: Except perhaps the competition which would be the L. & N. and N. C. & St. L. Railroads, or those southern lines, and that is a matter of their records, Mr. Examiner, and I have not access to those southern lines' records. They, perhaps, can explain that to the Commission.

Mr. Thomas: Do you say that Middlesboro is on the N. C. & St. L. Railroad?

Mr. Webster: I think you had better tell the Commission and get it in the record. I have answered your question half a dozen times.

Mr. Thomas: You have given the reason for the reduction of rates——

Mr. Webster: Because I know in a general way what the situation is in the State and what has brought about these reductions. If I did not——

Mr. Thomas: That is testing the accuracy of your assumption.

728 Mr. Webster: No, it is not an assumption with me, it is a matter of market competition.

Mr. Thomas: Is Middlesboro, Kentucky, in Southeastern territory?

Mr. Webster: I have stated to you gentlemen half a dozen times here that I did not know where Middlesboro was, and I don't know what railroad it is on, and I think your question is nonsensical in an instance of that kind.

Mr. Thomas: I think it meets your proposition when you give a reason for the proportional rates.

Mr. Webster: I have given the reason to all territory as to the adjustment of rates as I know it.

Mr. Thomas: Your last answer is complete, that you don't know anything about it.

Mr. Webster: Thank you, sir.

Mr. Thomas: Do you know whether or not these proportional rates apply to Gallatin, Tennessee, or not?

Mr. Webster: I can tell you in just a minute, I think. Yes, they apply to Gallatin, Tennessee.

Mr. Thomas: Where is Gallatin, how far from Nashville?

Mr. Webster: I don't know.

Mr. Thomas: Do you know why they apply to Gallatin, Tennessee?

Mr. Webster: Only in a general way, as I have stated to you, because of competition in there from the East versus the West, or from western markets.

Mr. Thomas: What competition is there at Gallatin, Tennessee?

Mr. Webster: I don't know. I told you generally in the adjustment.

Mr. Thomas: Is it or not on one main line, and that the mail line of the L. & N. Railroad between Bowling Green and Nashville?

729 Mr. Webster: I don't know anything about it. I don't know where it is located or anything about it.

Mr. Thomas: Do you know how far up the main line coming from Nashville towards Bowling Green these proportional rates apply?

Mr. Webster: No sir.

Mr. Thomas: You have given a history of the origin of these proportional rates. Do you know whether or not the history that you have investigated shows that there was a proposition made confining the application of these proportional rates to the points where a reduction from the East had actually occurred?

Mr. Webster: No sir.

Mr. Thomas: When traffic originates, say, at Chicago, you apply these—destined for Bowling Green—you apply the 40-cent scale to New Albany, Indiana, the Ohio River crossing, do you not?

Mr. Webster: Oh, yes. That is a two-line proposition with us. We do not reach New Albany or Jeffersonville.

Mr. Thomas: I am speaking of the roads generally. Where it is destined for Nashville, the 35-cent scale is applied?

Mr. Webster: Yes sir.

Mr. Thomas: Is there any participation in the lines north and south of the river in this loss of the five cents?

Mr. Webster: No sir, it is all taken care of by the lines north of the river.

Mr. Thomas: North of the river?

Mr. Webster: Yes sir.

Mr. Thomas: That is all I want to ask you.

Mr. Cardy: Mr. Webster, all territory located in Green Line territory takes the 35-cent proportional rate?

Mr. Webster: In Southeastern territory, yes sir.

Mr. Cardy: And the Green Line territory?

Mr. Webster: Not necessarily.

730 Mr. Cardy: Where is the northern boundary of the Green line territory? Don't all these proportional rates apply to points south of the Kentucky State line?

Mr. Webster: Oh, yes.

Mr. Cardy: And stations located near——

Mr. Webster: Wait a minute. Let me modify that: You say south of the Kentucky State line. To all points other than the prorating points in the Southeastern Mississippi Valley.

Mr. Cardy: That is all right; that is all I care to ask,—or I do want to ask Mr. Webster one more question: Mr. Webster, the C. & E. I. is operated separate from the Frisco?

Mr. Webster: We have been separated from the Frisco since May 17th, 1913. They are operated as an independent company with no outside control.

Mr. Cardy: Does it operate or control any lines south of the river?

Mr. Webster: We have no interest whatever in any line south of the river.

Mr. Cardy: That is all.

Mr. Connell: I think you have stated, Mr. Webster, that the short line between Chicago and Nashville was through Evansville?

Mr. Webster: Why, I don't know that I stated that, but that is true.

Mr. Connell: And business carried through Evansville would not pass through Bowling Green?

Mr. Webster: No sir.

Mr. Connell: So that it——

Mr. Webster: When destined to Nashville.

Mr. Connell: So that if the 35-cent scale of rates was withdrawn between Chicago and Jeffersonville, the C. & E. I. might

731 still carry the 35-cent scale to Evansville and apply it on Evansville business?

Mr. Webster: I would think so, unless the Commission should decide it would be a discrimination by that route.

Mr. Connell: But that is not a Fourth Section violation through Evansville?

Mr. Webster: No Fourth Section violation, absolutely no.

Mr. Cardy: That is all.

Mr. Thomas: How far is it from Chicago to Nashville through Evansville?

Mr. Webster: 287 miles to Evansville, and 158 miles from Evansville to Nashville, about 445.

Mr. Thomas: How far is it from Chicago to Bowling Green through Evansville, by rail?

Mr. Webster: It is 287 miles to Evansville, and it is 159 miles from Evansville to Bowling Green, or 447 miles.

Mr. Thomas: How far to Nashville, did you say it was?

Mr. Webster: 446 miles, I think.

Mr. Thomas: Just one mile difference.

Mr. Webster: Yes sir, one mile difference.

Mr. Thomas: After you reach Evansville the carriage would be over the L. & N. to Guthrie, would it not?

Mr. Webster: To reach Nashville it would be over the L. & N. through Guthrie.

Mr. Thomas: Likewise, to reach Bowling Green, it would be to Guthrie, and then over the L. & N. to Bowling Green, would it not?

Mr. Webster: I presume so. I am not familiar enough with the L. & N. operating situation to answer that fact.

Mr. Thomas: In other words, it would be a carriage over the same road from Evansville to Guthrie, the same line?

732 Mr. Webster: I don't think there would be any question at all that part of the route would be over the same line.

Mr. Thomas: Do you know how far it is from Chicago to Guthrie? Can you find out there?

Mr. Webster: Yes, it is 396 miles.

Mr. Thomas: That is about right, I think.

Mr. Webster: Yes.

Mr. Thomas: That is all.

(Witness excused.)

W. T. STEVENSON was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Connell: Mr. Stevenson, give your full name, please.

Mr. Stevenson: W. T. Stevenson.

Mr. Connell: Mr. Stevenson, you are chief of the tariff bureau of the C., C., C. & St. L. Railroad?

Mr. Stevenson: Yes sir.

Mr. Connell: And are you familiar with the rates that are in issue in this proceeding?

Mr. Stevenson: Yes sir.

Mr. Connell: Will you tell us, Mr. Stevenson, how the rates from Chicago to Nashville are made?

Mr. Stevenson: Well, Mr. Webster has explained the origin of the 35 to 10 scale. The Big Four had nothing to do with the establishment of that scale. It was established irrespective of our wishes. As the other roads had notified us that they were going to make

such a scale effective, we either had to meet the rates created
733 by the other roads, or go out of business. The rates from Chicago to Nashville created by the other lines were established via Evansville.

Mr. Connell: What Ohio River crossings does the Big Four reach from Chicago?

Mr. Stevenson: We reach Cincinnati, Jeffersonville, Evansville and Cairo. The rate from Chicago is the following differential higher than the rates from St. Louis to Nashville: 12, 11, 5, 5, 5, 2. We meet these rates established from Chicago to Nashville via Louisville, and in so doing handle business through Bowling Green.

The distance from St. Louis to Nashville is 323 miles. The distance from Chicago to Nashville via Evansville is 445 miles. The distance from Chicago to Nashville via Louisville is 489 miles. The rates, St. Louis to Bowling Green, are 92, 79, 65, 54½, 47, 42. By using the same differentials over St. Louis from Chicago in making rates to Bowling Green as are used in making rates to Nashville, the Chicago rates would be: $1.04, 90, 70, 57½, 50, 44. However, the rates from Chicago to Bowling Green are 78, 67, 53, 40, 33, 27. In other words, Chicago-Bowling Green distance, 419 miles, for a two-line haul, the rates are 14, 12, 12, 14½, 14 and 15 less than the rates from St. Louis for 324 miles on a one-line haul.

In Agent Fulton's I. C. C.——

Mr. Connell: Just a moment, Mr. Stevenson. If the same basis was used in constructing the rates from Chicago to Bowling Green as is used in constructing the rates from St. Louis to Bowling Green versus St. Louis to Nashville, the present rates from Chicago would be advanced?

Mr. Stevenson: Yes sir.

Mr. Connell: Go ahead.

Mr. Stevenson: In Agent Fulton's I. C. C. A-82 he publishes approximately 294 commodity items. A number of these
734 items cover several commodity ratings. The rating on approximately 196 of these items is the same on business for Bowling Green as on business to Nashville. This is caused by reason of our local rates being lower than the proportional rates. Our local rate to the Ohio River crossings under the Official Classification is less than the proportional rate under the Southern Classification. The local rate is published as a commodity proportional rate, as it would be not a practical proposition, even if we had desired to attempt to hold a higher proportional rate than our local rate.

Mr. Connell: In other words, even though you have what you call a 40-cent scale and a 35-cent scale, neither of those scales mean anything until you apply them on some particular commodity in connection with some classification?

Mr. Stevenson: In connection with the classification.

To develop what was really an issue in this case, I had a statement prepared covering the month of March for the Big Four Railroad, showing the traffic handled out of Chicago for Bowling Green during the month of March. It consisted of the following shipments:

One barrel of washing powder, one barrel of salted peanuts, seven

boxes of smoked meats, half a barrel of pickles, one box of pickles in tins, 25 boxes of cheese, two bags of poultry feed, a bundle of carpet, five crates of pictures and a case of buttons.

Mr. Thomas: May I interrupt you to ask where from?

Mr. Stevenson: From Chicago.

Mr. Thomas: To Bowling Green over your line?

Mr. Stevenson: Yes sir. That is a total of ten less than car load shipments.

I had a similar statement prepared by the C. I. & S. Railroad, and their total business consisted of eleven less than car load shipments, with a total weight of 1,280 pounds, and one car load of potatoes.

735 Mr. Thomas: That was also Chicago, was it?

Mr. Stevenson: Yes sir. Mr. Fulton at the request of the interested lines prepared a statement for the month of January, 1914, covering all traffic from Chicago to Bowling Green handled by all of the roads. It consisted of 60,000 pounds—well, to be exact, 60,681 pounds of less than car load shipments, and three car loads of potatoes weighing 106,100 pounds. The total traffic from Chicago for all roads into Bowling Green for the month was 83½ tons.

Mr. Connell: Have you prepared a statement, Mr. Stevenson, showing these 196 items which take the same rate between Chicago and the Ohio River when destined to either Nashville or Bowling Green?

Mr. Stevenson: I did not prepare a statement covering the entire list of items, because I felt that there were a good many of them that would never move to Bowling Green, that is, traffic covered by the items. I did prepare a list showing commodities which might possibly move to Bowling Green, on which the rate to Bowling Green is the same as to Nashville, in so far as our charges north of the Ohio River are concerned.

Mr. Connell: You had better file that statement as an exhibit.

(The statement, so offered and identified, was received in evidence and thereupon marked "Stevenson Exhibit No. 1, received in evidence April 14, 1914," and is attached hereto.)

Mr. Connell: Stevenson's Exhibit 1 consists of two pages, one showing rates from Chicago, and the other rates from Indianapolis. How do you arrive at this 40-cent scale between Chicago and Ohio River crossings?

Mr. Stevenson: It is the uniform scale that is used in the construction of rates throughout C. F. A. territory, and is approximately at 300-mile scale.

736 Mr. Connell: What is the average distance from Chicago to the several Ohio River crossings?

Mr. Stevenson: Three hundred miles is considered the distance in all rate-making—in all traffic matters.

Mr. Connell: That is, to Evansville and other Ohio River crossings east of Evansville, that is used to all crossings with the exception of Cairo?

Mr. Stevenson: With the exception of Cairo.

641

Mr. Connell: How does that C. F. A. scale compare in a general way with the rates throughout other territory?

Mr. Stevenson: So far as I know, it is the lowest scale of rates in existence.

Mr. Connell: Do you know of any cases where the Commission have approved the application of the rates based on the C. F. A. scale to the Mississippi River, for instance, when used as part of a through rate?

Mr. Thomas: From where, Mr. Connell?

Mr. Connell: From any point in C. F. A. territory.

Mr. Stevenson: It was approved in the original Indianapolis Freight Bureau cases.

Mr. Connell: The Burnham-Hanna-Munger case?

Mr. Stevenson: The Burnham-Hanna-Munger case and in a subsequent case to which the Indianapolis Freight Bureau was a party, but I cannot remember the title of the case. Ft. Wayne, Marion, and several other Indiana points were parties to the second case. It was really a reopening of the original Indianapolis Freight Bureau case in effect, although I do not think that was the title of it.

Mr. Connell: They can all be referred to in the briefs, of course?

Mr. Stevenson: My recollection is, it was approved in the complaint filed by the Bay City Board of Trade also.

737 Examiner Thurtell: In this Exhibit A that you have filed, Mr. Stevenson, you give a list of 71 commodities on which the rate to Bowling Green from Chicago is exactly the same as it is to Nashville, and Nashville has a list of commodities which you state about how many?

Mr. Stevenson: 196 out of 294.

Examiner Thurtell: What do you mean by 196?

Mr. Stevenson: Items in the tariff.

Examiner Thurtell: It is a list of 196 items.

Mr. Stevenson: I say approximately, because I did not take the supplements into consideration, which would increase that number. In the original tariff there were 294 commodity items. Out of 196 of those items the proportional rate published in that proportional tariff is the local rate.

Examiner Thurtell: So that, in effect, on 196 to 200 and odd items, the rate to Bowling Green from Chicago is exactly the same as it is to Nashville?

Mr. Stevenson: Yes sir.

Examiner Thurtell: On this list you give a list of about 86,000 pounds that moved out of Chicago through a certain month, the month of January, or March?

Mr. Stevenson: Yes sir.

Examiner Thurtell: This year, destined to Bowling Green?

Mr. Stevenson: Yes sir.

Examiner Thurtell: Did you examine that list to see how many of the commodities that actually moved to Bowling Green moved under rates higher than the Nashville rate?

Mr. Stevenson: I did not make that comparison, Mr. Examiner,

because they were all less than carload shipments, which ran from 40 to 150 pounds each.

Examiner Thurtell: You got three carloads of potatoes?

738 Mr. Stevenson: Yes sir.

Examiner Thurtell: How about them?

Mr. Stevenson: The rating on potatoes to Bowling Green is higher than it is to Nashville.

Mr. Connell: That is, from Chicago proper?

Mr. Stevenson: Yes sir.

Mr. Connell: But these potatoes would be moving from Wisconsin or Minnesota points, would they not?

Mr. Stevenson: Potatoes do move from there, but the comparison that I made was from Chicago.

Mr. Connell: Potatoes that would originate in Wisconsin and Minnesota, wouldn't they move to the Ohio River on through rates?

Mr. Stevenson: Yes sir.

Mr. Connell: You would not apply your local rate from Chicago to the Ohio River there?

Mr. Stevenson: No sir, I think I stated—if I did not it should be made clear—that these commodities that I have listed in the exhibits are those which it was felt would possibly be commodities that we had actually shipped, therefore the whole 196 were not listed.

Mr. Connell: What would be the effect of applying that 35-cent scale between Chicago and the Ohio River on business destined to Bowling Green?

Mr. Stevenson: Well, it would give Bowling Green a preferential set of rates that does not apply to other Kentucky territory. In connection with that it might be stated that the 35 to 10 scale is really a division of a through rate, that is, it is a scale differential. Mr. Webster explained that that was created by reason of certain changes made from St. Louis.

Now, the 23-cent scale from St. Louis is not published as a proportional scale. It is simply used as a differential in arriving at through rates which are published from St. Louis. We do

739 not publish through rates from Chicago, but the 35 to 10 scale is simply the differential corresponding with the differential that applies from St. Louis. Therefore, it is in effect really a division of a through rate, and our divisions and proportions of all through rates vary according to the destination. For instance, we have through rates from Chicago to Memphis, applying through Louisville and Bowling Green, and our proportion from Chicago to Louisville is widely different than through our local scale or the 35 to 10 scale on business going to Memphis.

Mr. Connell: Will it also vary, Mr. Stevenson, if it goes to Vicksburg, New Orleans or Mobile?

Mr. Stevenson: Yes, or to the Virginia cities. There are through rates from Chicago through Louisville to the Virginia cities, and there is another variation.

Mr. Connell: Or to any prorating point in the south?

Mr. Stevenson: To any point.

Examiner Thurtell: Mr. Stevenson, to see what we have before us

here, Nashville is the point that has been, we may say, set aside, and you are publishing to Nashville from Chicago, whether by through rates or by proportional rates to the Ohio River crossings, a set of rates which are materially less than they are to intermediate points if north of Nashville. We will say nothing about Bowling Green for the time being. If that is justified at all, it must be justified by some peculiar situation at Nashville which brings about a necessity for those low rates from Chicago and other points in Central Freight Association territory. Any other condition must lead us to the conclusion that the rates to Nashville are preferential as compared with the rates to intermediate points and other points close by. Now, Bowling Green has brought a complaint which has been heard by the Commission, and the Commission has found that the situ-
740 ation at Nashville is particular and peculiar of itself; that it is not the only point in that territory that might perhaps be accorded lower rates than other points; that the same conditions, the same transportation conditions exist at Bowling Green as exist at Nashville, and that any different treatment of Bowling Green than the treatment that is accorded to Nashville results in preference to one and prejudice to the other. Isn't that about the situation we have before us here?

Mr. Stevenson: Yes sir.

Examiner Thurtell: And shouldn't you direct your testimony to the justification as you see it for the different treatment at Bowling Green?

Mr. Stevenson: The rate basis to Nashville from Chicago is made, as I stated, not by the Big Four but by other roads that we could not control. It was made with relation to the rates from St. Louis. The Big Four did not make the rates from St. Louis to Nashville, and did not have anything to do with making them. Because a certain rate adjustment was made from St. Louis to Nashville, certain roads, not the Big Four, established a basis of rates from Chicago to Nashville thru Evansville, and it was either that we meet that competition or stay out of the business. In meeting the competition we had to apply the rate through Louisville and handle business through Bowling Green. If we did not participate in the 35 cents to 10-cent scale from Chicago to Louisville on Nashville business, that would remove the discrimination so far as we are concerned, but it would not eliminate the 35 to 10 scale. The rates were made with relation to St. Louis, and as I pointed out, the present rate from Chicago to Bowling Green is lower than the rate from St. Louis to Bowling Green, whereas the Nashville rate from Chicago is higher than from St. Louis. The rate from Chicago to Bowling Green today, with relation to the base rate to St. Louis, is less than it ought to be. We had nothing—I mean
741 we, the Big Four Railroad—we did not have anything to do with creating the 35 to 10 scale. We only met it as a matter of competition. We certainly would never have put it into effect if left to us. Because we have met that competition where we found it, it is to be used as an excuse to apply the same rate where competition does not exist.

Examiner Thurtell: The roads that were responsible for putting in the 35-cent rate to the Ohio River crossings applicable on business going to Nashville, were which ones?

Mr. Stevenson: The Illinois Central and the C. & E. I., when they were part of the Frisco system.

Examiner Thurtell: Who represents the Illinois Central here today?

Mr. Stevenson: I don't think they are represented.

Examiner Thurtell: They are parties to your tariff, are they not?

Mr. Stevenson: The Illinois Central, Mr. Examiner, I don't think would be a factor in Chicago to Bowling Green business. They have no route from Chicago to Evansville that is a practical route.

Examiner Thurtell: They are a factor on the traffic to Nashville?

Mr. Stevenson: Yes sir.

Examiner Thurtell: Go ahead, Mr. Connell.

Mr. Connell: What would be the affect, Mr. Stevenson, if the Commission should decline the application of the Big Four and say that you should carry any higher or any lower rate to the Ohio River on Nashville business than on Bowling Green business, and you should withdraw this 35-cent scale which is now applicable on the Nashville business?

Mr. Stevenson: Well, it would simply mean that we would get out of the Nashville business.

742 Mr. Connell: And the 35-cent scale would still be effective by some of these other lines?

Mr. Stevenson: Yes sir.

Mr. Connell: Who do not pass through Bowling Green?

Mr. Stevenson: Yes sir.

Examiner Thurtell: That is on the assumption that the Commission acts favorably upon the Fourth Section application?

Mr. Stevenson: Yes sir.

Examiner Thurtell: Suppose the Commission directed an order in accordance with the statements of the hearing today, directed to all of the lines operating up to the Ohio River crossings, requiring the establishment of the same rates from Chicago to the Ohio River crossings applicable upon business to Bowling Green as are concurrently in effect on the business going to Nashville?

Mr. Stevenson: We would do everything we could to get 40 to 12 cents established to Nashville.

Mr. Connell: If the Commission should order the 35-cent scale established on business for Bowling Green, would it be necessary to apply the same scale to all points in Kentucky?

Mr. Stevenson: We certainly would not do it until the Commission told us to, but it would create discrimination in favor of Bowling Green.

Examiner Thurtell: Against what point?

Mr. Stevenson: Against other points in Kentucky.

Examiner Thurtell: Why so?

Mr. Stevenson: Because to other points the 40 to 12 scale is applicable.

Examiner Thurtell: To what other points in Tennessee does this 40 to 12 scale apply?

Mr. Stevenson: To what other points in Tennessee?

743 Examiner Thurtell: Yes sir. You don't apply this 35-cent scale to other points in Tennessee.

Mr. Stevenson: I think it applies to all points in Tennessee, Mr. Examiner.

Examiner Thurtell: Assuming that I am mistaken about that, and possibly that is true, Mr. Fulton can tell us about that, but the fact that Nashville is in the State of Tennessee and you apply that 35-cent scale to Nashville, does it follow that you should apply that to all points in the State of Tennessee because you apply it to Nashville?

Mr. Stevenson: No, we would not have done it. We apply it simply where the other fellow applied it first, to meet his competition.

Mr. Fulton: Mr. Examiner, can I make a statement there? Is it permissible for me to do so?

Examiner Thurtell: I think so, Mr. Fulton.

Mr. Fulton: This proportional scale, 35 to 10, to the north bank Ohio River Crossings, applies to those Ohio River Crossings on all traffic south of the States of Kentucky, Virginia and south of the main line of the Norfolk & Western Railway; east of the main line of the Illinois Central Railroad from Cairo to Jackson, Tennessee; east of the main line of the Mobile and Ohio Railroad from Jackson to Mobile. Therefore, it takes in the whole State of Tennessee east of the Southern line that I have mentioned, and that has been the practice for any number of years, I believe.

Examiner Thurtell: What I want to get down to is this: Mr. Stevenson asserts that to apply those proportional rates on business going to Bowling Green when they were not made applicable to other points in Tennessee, that that would create prejudice against the other points in Kentucky.

744 Mr. Fulton: It is certain that the commercial interests at every large center in Central Freight Association territory would at once demand the same rate to Ohio River crossings on other Kentucky business, say, for instance, to Frankfort and Lexington, as they were receiving—the carriers were receiving on business for Bowling Green.

Mr. Stevenson: Mr. Examiner, Lexington, Kentucky, I am pretty sure, is the largest interior town in the State. They do quite a jobbing business in Lexington, there are several wholesale houses there. What I intended to convey was, that the establishment of a 35 to 10 scale to Bowling Green would be a discrimination against Lexington, using that point as an illustration.

Examiner Thurtell: Wouldn't that be a little bit hard to see, if Lexington takes from Chicago and most of these points in Central Freight Association territory a lower through rate than would Bowling Green if this change was made to Bowling Green?

Mr. Stevenson: I don't know what the rate is from Louisville or Cincinnati to Lexington, but the rate from Chicago, Louisville or

Cincinnati on business going to Lexington is exactly the same today as it is on Bowling Green.

Examiner Thurtell: But the shipper at Lexington would be interested solely in the total amount of the rate to be had. If the total through rate to Lexington were then less than the rate established to Bowling Green, could a shipper at Lexington assert that he was being discriminated against in favor of Bowling Green?

Mr. Stevenson: Well, I don't know. The complaint here, as I understood, is, that simply because we charge the 35 to 10 scale on business going to Nashville, we are discriminating against Bowling Green, because they do not get it. The same situation would exist at Lexington.

Mr. Burger: Mr. Examiner, if I may be permitted to say
745 something here, I understand Nashville is a highly competitive point. He has mentioned Lexington and Frankfort, junction points in Kentucky, and the total through rate from Chicago to Lexington may be less than the total through rate from Chicago to Bowling Green, but Bowling Green is a local station. The necessity for the same total through rate to Bowling Green as to Lexington does not exist, because Bowling Green has not the competition to meet that Lexington has, or the railroads that establish the rates from the river to those points. When he speaks of discriminating against other points in Kentucky, he might just as well add in these local stations in Kentucky or local stations up and down on the L. & N. north and south.

Mr. Stevenson: Simply to pick out——

Examiner Thurtell: Let us go back to your interjection here. I am developing this——

Mr. Thomas: If you will allow me to make this one suggestion, that the Commission declared that if Nashville was a competitive point, Bowling Green was also, because the conditions as to traffic as to the two points were substantially similar, both had water competition.

Examiner Thurtell: Go on, Mr. Connell.

Mr. Burger: Mr. Examiner, I just mentioned that because these gentlemen her are all northern lines men, and they probably do not understand conditions south of the river, and I thought I could clear that up.

Mr. Stevenson: Mr. Examiner, I would like for it to be understood that my remarks were directed solely to the rates north of the Ohio River. I do not know anything about the rates or the adjustment of them, or why they are made south. I simply picked out Lexington as illustrating another point in Kentucky. I don't know what the rate adjustment south of the Ohio River to Lexington is. Our rates north to Ohio River crossings are the same, whether traffic is
destined to local or competitive points south of the Ohio
746 River.

Mr. Connell: It seems to me, Mr. Examiner, that the way the case stands right now, it has not been shown that the actual through charges on any commodity between Chicago and Bowling Green exceed the through charge on the same commodity from

Chicago to Nashville. We have shown here by Stevenson's Exhibit No. 1 a great many commodities where the rates between Chicago and the Ohio River would be exactly the same on business destined to both Bowling Green and Nashville, and if the factor south of the river is the same on the same commodity, then the through rate would be the same.

Examiner Thurtell: The factor south of the river is the same. If, by any tariff revision you saw fit to incorporate, the lines north of the Ohio River apply the same rates on traffic destined to Bowling Green as on traffic destined to Nashville, I understand this complainant is entirely satisfied. Your exhibit shows certain commodities on which you do apply the same rates to Bowling Green as to Nashville, but I do not think that you are ready to contend that you are doing that on all commodities, even on all commodities that might move to Bowling Green.

Mr. Connell: I don't know of anything in the record so far that shows that there are any commodities that are at present moving from Chicago to Bowling Green, or that might move from Chicago to Bowling Green, on which the through charge to Bowling Green would be higher than the through charge to Nashville.

Mr. Thomas: This case originated over a shipment from South Bend, Indiana, where they charged Bowling Green a greater rate than was charged on a like shipment to Nashville.

Examiner Thurtell: Yes. Of course the rates have changed since that time because of the establishment of the——

Mr. Thomas: I mean this hearing now, not the original complaint. The reopening of this case originated through correspondence on a specific case of a charge of a greater rate on a shipment from South Bend, Indiana, to Bowling Green than was charged for a like shipment to Nashville.

747

Mr. Fulton: We will admit that the difference in class rate and the difference in classification will in some cases make a higher charge to the river on Bowling Green business than on Nashville business, that is, the whole basis.

Mr. Connell: But at the same time there are a great many commodities where the charge would be the same on business destined to both Bowling Green and Nashville.

Examiner Thurtell: According to this exhibit.

Mr. Connell: Mr. Stevenson, Middlesborough and Fonde were mentioned during Mr. Webster's examination. Can you tell us why the 35-cent scale is applied on business destined to those points?

Mr. Stevenson: For the same reason *what* it is applied to Nashville. The lines from St. Louis established a differential basis from St. Louis, and it was followed from Chicago.

Mr. Connell: What is the line leading from St. Louis?

Mr. Stevenson: The Southern Railroad established the basis from St. Louis.

Mr. Connell: And the Southern Railroad is one of the lines which is governed by the Southern Classification?

Mr. Stevenson: Yes sir.

Mr. Connell: That is all.

Cross-examination:

Mr. Thomas: Where is Middlesborough?

Mr. Stevenson: It is in the southeastern part of the State of Kentucky, right close to the Tennessee line.

Mr. Thomas: The extreme southern part of Kentucky?

748 Mr. Stevenson: Yes sir.

Mr. Thomas: Do you know how long these proportional rates have been applied to Middlesborough?

Mr. Stevenson: I would not want to say positively, Mr. Thomas, but it is about seven or eight years.

Mr. Thomas: Do you know the means by which they were first secured for Middlesborough?

Mr. Stevenson: I just stated that the Southern Railroad established the differential basis from St. Louis.

Mr. Thomas: To Middlesborough?

Mr. Stevenson: And Fonde.

Mr. Thomas: Where is Fonde?

Mr. Stevenson: It is over in the same part of the State, on the Southern Railroad.

Mr. Thomas: The establishment of these proportional rates to Middlesborough and Fonde did not result in the establishment of these proportionals to every other interior point in Kentucky, did it?

Mr. Stevenson: I did not say it did.

Mr. Thomas: No, but didn't you say a minute ago in your direct examination that the establishment of proportionals to Bowling Green would result in a demand from every other point in Kentucky that they receive the same proportionals?

Mr. Stevenson: I said that was my opinion, yes sir.

Mr. Thomas: Why didn't the establishment to Middlesborough do the same thing?

Mr. Connell: One case, it was done voluntarily by the carriers, and in the other case by order of the Commission. That makes quite a bit of difference.

Mr. Thomas: Is that the only reason?

Mr. Stevenson: I might state one reason was, that Middles-

749 borough has had that basis, as I say, according to my recollection, for about eight years. You could make a good many changes eight years ago in rates and nobody ever paid any attention to them. Today, the slightest adjustment is taken up and used by everybody just as soon as it is made.

Mr. Thomas: The establishment of the 91-cent scale, or Nashville basis to Bowling Green, on traffic destined from the east, although it has been in effect some time, has not resulted, has it, in the establishment of the same scale to other local points in Kentucky?

Mr. Stevenson: I don't know.

Mr. Thomas: Do you think it has?

Mr. Stevenson: I don't know.

Mr. Thomas: You said that this proportional is applied to all places in Tennessee where Tennessee joins Kentucky, southern Kentucky, and Bowling Green having been established as being entitled

to the same rates as Nashville, because the same traffic conditions, substantially, exist at both places as to competition. Is there not a greater reason why Bowling Green should have the advantage of these proportional rates if every point in Tennessee like Gallatin and every other points gets it, down a short distance from Bowling Green, in Tennessee, just over the Tennessee line between Nashville and Bowling Green?

Mr. Stevenson: As I understand your question it is this: that as the 35 to 10 scale applies to points in Tennessee, is there any reason why it should not apply to Bowling Green?

Mr. Thomas: Yes sir, is there not a greater reason why it should apply to Bowling Green?

Mr. Stevenson: If the Big Four Railroad had voluntarily established the 35 to 10 scale to Nashville and the other Tennessee points that you mention, I would say it would be a good reason why they should apply as to Bowling Green, but we did not voluntarily
750 establish it. As Mr. Webster said, we had it forced down our throats. It was either take it or get out of the business.

Mr. Thomas: How far is it from St. Louis to Bowling Green, by rail?

Mr. Stevenson: 323 miles.

Mr. Thomas: And from St. Louis to Nashville?

Mr. Stevenson: St. Louis to Nashville is 324 miles.

Mr. Thomas: Just one mile difference?

Mr. Stevenson: Yes sir.

Mr. Thomas: 323 and 324?

Mr. Stevenson: Yes sir. Our rate from Chicago for 419 miles is less than it is from St. Louis, and it is a two-line haul from Chicago, and it is a one-line haul from St. Louis.

Mr. Thomas: How far is it from Chicago to Bowling Green thru the Louisville gateway?

Mr. Stevenson: 419 miles.

Mr. Thomas: How far is — from Chicago through the Evansville gateway to Bowling Green, by rail?

Mr. Stevenson: 446 miles.

Examiner Thurtell: I think you have covered all that.

Mr. Thomas: Where is South Bend, Indiana, located?

Mr. Stevenson: It is in the north central part of the State, a little east of Chicago.

Mr. Thomas: Is that proportional applied on traffic from South Bend to Nashville?

Mr. Stevenson: Yes sir.

Mr. Thomas: And not to Bowling Green?

Mr. Stevenson: Yes sir.

Mr. Thomas: You say not to Bowling Green, the proportional is not?

Mr. Stevenson: That is correct.

751 Mr. Thomas: What are the commodities, or what are the goods manufactured largely at South Bend, do they make plows, for instance?

Mr. Stevenson: The Oliver Plow Company is there, the Stude-

maker Wagon Company. Those are the only two large industries that I can name off-hand.

Mr. Thomas: Do plows and other hardware articles appear in this list here, that you say the same rate exists to Bowling Green as exists to Nashville from South Bend, for instance?

Mr. Stevenson: I don't think so. The list speaks for itself.

Mr. Thomas: Are there any automobiles made there?

Mr. Stevenson: I think so, I am not sure.

Mr. Thomas: The Studebakers are there are they not?

Mr. Stevenson: Yes sir, I testified direct that they were there.

Mr. Thomas: Plows, wagons, automobiles and other hardware articles are not in the list of commodities, are they, where the same rate is charged to Nashville as to Bowling Green?

Mr. Stevenson: I don't recall what is in the list, Mr. Thomas. I gave you a copy of it.

Mr. Thomas: Where is Ottawa, Illinois?

Mr. Stevenson: It is west of Chicago.

Mr. Thomas: West of Chicago?

Mr. Stevenson: Yes sir.

Mr. Thomas: Is that in the Central Traffic Association?

Mr. Stevenson: No sir, not on business going to the South.

Mr. Thomas: You prepared no statement of shipments from other points in Indiana, except Indianapolis, for the month of January, 1914, did you?

Mr. Stevenson: I did not prepare the statement.

Mr. Thomas: You said you had Mr. Fulton prepare one,
752 did you not?

Mr. Stevenson: From Chicago.

Mr. Thomas: He prepared none from Indianapolis?

Mr. Stevenson: No sir.

Mr. Thomas: These two statements you filed were from Chicago, January, 1914, for all the roads, and March, 1914, for your road, is that correct?

Mr. Stevenson: No sir, I did not file any statement covering the amount of business from any place during any period.

Mr. Thomas: You referred to it, I mean you referred to the shipments?

Mr. Stevenson: I testified as to the quantity of freight.

Mr. Thomas: Testified from a statement?

Mr. Stevenson: That moved from Chicago.

Mr. Thomas: You testified from a statement which you held in your hand?

Mr. Stevenson: I did not file it.

Mr. Thomas: You testified from it?

Mr. Stevenson: Yes sir.

Mr. Thomas: You have no statement made up from Indianapolis?

Mr. Stevenson: No sir.

Mr. Thomas: And other Indiana points?

Mr. Stevenson: No sir.

Mr. Thomas: Just Chicago alone for twelve months?

Mr. Stevenson: That is all.

Mr. Thomas: Do you know where Gallatin, Tennessee, is?
Mr. Stevenson: I know approximately where it is.
Mr. Thomas: About how far is it from Nashville?
Mr. Stevenson: I understand it is a little north of Nashville, between Bowling Green and Nashville. That is my understanding.
Mr. Thomas: That is all.

(Witness excused.)

753 Whereupon, at 12:30 o'clock p. m. a recess was taken until 1:30 p. m.

After Recess.

M. S. CONNELLY was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Connell: You may state your name and position, Mr. Connelly.
Mr. Connelly: M. S. Connelly; general freight agent P. C. C. & St. L. Railway, Pittsburg.
Mr. Connell: You- line participate in traffic from Chicago to the Ohio River?
Mr. Connelly: Yes sir.
Mr. Connell: Destined to both Nashville and Bowling Green?
Mr. Connelly: Yes sir.
Mr. Connell: At what Ohio River crossings?
Mr. Connelly: At Louisville and Jeffersonville.
Mr. Connell: And the situation on your road is the same as it practically is on the Big Four, I suppose?
Mr. Connelly: Practically the same thing, that is to say, we serve Chicago through the Cincinnati as well as the Jeffersonville gateway and New Albany, but we do not serve it through Evansville or Cairo; that is, we offer service to the public at Chicago for traffic going South through Cincinnati and Jeffersonville gateways, but we do not operate via Evansville and Cairo.
Mr. Connell: On the business destined to Nashville you apply the 35-cent scale, and 40 cents you charge on business destined to Bowling Green, the same as the Big Four?
Mr. Connelly: Yes sir.
754 Mr. Connell: You have heard the testimony of Mr. Webster this morning in regard to the conditions which brought about this 35-cent scale from Chicago to the Ohio River on business destined to Green Line Territory. Do you agree with Mr. Webster's testimony?
Mr. Connelly: Mr. Webster's testimony is a very elaborate illustration of the basis for making rates to points in the South, south of the Tennessee and Virginia State lines, and gives the basis which the railroads used in establishing rates from St. Louis and Chicago to points in the South referred to.
Leading up to this I want to make a statement to the effect that

the rates of classes and commodities from Chicago to the Ohio River points proper, are, as a rule, made on the same basis as are the rates from other points in Central Freight Association territory to the Ohio River, the exceptions being the proportional rates applicable on traffic to points South of Kentucky and Virginia, which are forced by the action of the carriers having rails north and south of the Ohio River.

Representatives of commercial bodies at prominent points in Central Freight Association territory have pointed out the fact that on traffic from Chicago the lines north of the river are accepting less than their current rates to the Ohio River, and are insisting that a similar reduction be made from all points in the Central Freight Association to the Ohio River on traffic for the South.

In order to meet the competition of the lines having their own rails from Chicago to various points in the South, such as Memphis, New Orleans, Vicksburg and so forth, it was necessary for other lines to reach an agreement under which they could serve the public at the same rates as published by the direct lines. In making this arrangement, the carriers of necessity were compelled to accept to and from the Ohio River something less than their local rates.

755 For many years the several lines operating between Chicago and the Ohio River received on traffic destined to points south of Kentucky and Virginia, with the exception of traffic destined to points referred to above, the following rates, which were the same as the established rates to Ohio River points proper, except that they were governed by the Southern Classification, while the rates to the points proper were governed by the Official Classification.

The rates referred to are as follows, first, second, third, fourth, fifth and sixth classes, you know:

40 34 25 17 15 12

The rates from St. Louis to points south of the States of Kentucky and Virginia are covered by through tariffs. I do not recall that at any time through rates from Chicago to that territory were ever covered by through rates, but the rates themselves were usually made in regard to the rates from St. Louis.

There came a time, say during May, 1905, when the lines serving Chicago, whose rails extended from Chicago to points beyond the Ohio River, after a conference with the other railroads whose lines extended only to the Ohio River, gave notice that on and after May 16, 1905, it would be their intention to reduce the through rates from Chicago to those points in the South by the following figures on the six classes:

5 4 3 2 2 2

They not only notified us that it would be their purpose to reduce the rates from Chicago to that territory as indicated, but they finally stated that all of the reductions would have to come out of the lines north of the river.

We seriously objected to that action. Our rates are on a very much lower basis north of the river than obtain south of the river,

and it seemed unfair to us that we should be asked that the
756 entire reduction—and you will note that this is a serious reduction—should come out of our earnings. Therefore, we, as I say, seriously objected to it; but after the lines having their rails north and south of the river finally gave notice that they would make the new rates effective, and that they would take it out of their proportion north of the river, we, of necessity, in order to continue to serve the people who had located with us on the theory that we would invariably make the same rates to the South as our competitors, were forced by that action to arrange for the same through rates from Chicago to points south of the Kentucky and Virginia State lines that were made by the roads whose rails not only went to the river, but far into the South.

As the result of that it is true that out of the through rates to Nashville, Tennessee, we are forced to accept a lesser rate than we obtain on traffic going to points in Kentucky, to which points the through rates were not reduced by the lines having their rails north and south of the river.

Exactly the same condition obtains so far as traffic from Chicago to Mobile, as compared with traffic from Chicago to Montgomery, is concerned; that is to say, owing to competitive conditions, it is necessary for us to carry a higher rate from Chicago to Montgomery than we carry from Chicago to Mobile. In the divisions of the through rates to Montgomery, we get greater earnings than we enjoy on the shipments to Mobile. Exactly the same conditions obtain on traffic to Memphis, Vicksburg and New Orleans, or any other competitive point in the South to which the through rates are made and pro-rated on a mileage basis.

If we had declined to put into effect an arrangement which produced the same rates to Nashville and were established by the lines having their rails north and south of the river, we would have put the public generally at Chicago to a disadvantage, for the reason
that there always comes a time when there is a great scarcity
757 of cars, and if the entire shipping public at Chicago had to depend on two roads to furnish equipment to move their traffic into the South, they certainly would have met with great difficulty in having their freight moved with anything like promptness; at least, the conditions would be very much improved if there were four additional strong lines in the field; and, as I said before, a greay many industrials are located on the Big Four-Panhandle, Monon and C. & O. of Indiana, that actually depend upon us to serve them.

As I understand, the complaint of the Bowling Green people is due to the fact that they have become aware of the fact that our proportion of the through rate to Nashville is less than our proportion of the through rate to Bowling Green, and they ask that the rates from Chicago to Bowling Green be made by taking our proportional of the Nashville rate as a factor, and add to those figures the rates the Commission recently established from Evansville. That would be rather an unheard-of condition of affairs, I believe; that is to say, to take

a proportion of a through rate and use that as the base rate for making rates to other territories.

I agree with the statement made by Mr. Stevenson to the effect that if we publish as base rates any rates from Chicago to the river that are less than our present rates, I do not believe we could successfully defend those rates on shipments to Bowling Green, Kentucky, only. That is all I think of.

Examiner Thurtell: You think there is nothing in the situation at Bowling Green which warrants any different treatment of Bowling Green in so far as the proportions published by the lines north of the river are concerned, than can be said of points north and south of Bowling Green in Kentucky?

Mr. Connelly: No sir.

Examiner Thurtell: There is nothing unique about the
758 situation?

Mr. Connelly: I take it, Mr. Examiner, that you have reference to the water competition at Bowling Green, is that the idea, that the fact that there is some water competition at Bowling Green would make any difference with us. If that is the thought, I want to say that we undertake in the Central Freight Association to make our rates reasonable all rail, and practically pay no attention to this river water competition. We have had rates in effect from Pittsburg to Cincinnati, Louisville, New Albany and Jeffersonville for many years that were exactly on the scale—that is to say, we make no less rates from Pittsburg to Louisville or Cincinnati than we do to a point east of Cincinnati or Louisville.

Examiner Thurtell: In other words, you observe the Fourth Section on those rates?

Mr. Connelly: Yes sir.

Examiner Thurtell: And you would say that, or would you say that the situation here is about this: That whatever water competition may exist in this river is reflected intimately in the rates from Louisville to these various points along?

Mr. Connelly: Yes sir.

Examiner Thurtell: And that if Bowling Green is entitled to any different treatment than points north and south, it is shown in the difference in local rates to Bowling Green and to these points nort- and south of Bowling Green?

Mr. Connelly: From the river points.

Examiner Thurtell: From the river, and that so far as the carriers north of the river are concerned, they ought not, on account of water competition at Bowling Green, to publish any lower rates to the river applicable to Bowling Green than to any other point in the same territory?

Mr. Connelly: That has been my rule of practice for years.

759 Examiner Thurtell: And the only reason you now publish these proportional rates to the Ohio River on traffic destined to a certain territory is, that you have done that in order to meet the competition of the lines to what you might call the lower crossings, Cairo and Thebes?

Mr. Connelly: Yes sir.

Examiner Thurtell: And that in doing so, you have done that by making those rates applicable to a wide territory extending practically from the northern boundary of Tennessee clear to the Gulf; that all down through the Atlanta sub-territory and the Montgomery sub-territory, that you follow the same practice, through the Carolina territory, the proportional rates apply to this territory irrespective of whether the points are local destinations or competitive points, that same set of proportional rates applies up to the Ohio River crossings?

Mr. Connelly: Yes sir.

Examiner Thurtell: Whatever difference there may be in the rate condition is adjusted by the roads south of the river with whom you have nothing to do?

Mr. Connelly: Yes sir, that is an exact statement of it. I made the statement a moment ago that those rates from St. Louis are covered by a tariff showing rates direct from St. Louis to these several points, and that we have never had a tariff that gave that information from Chicago. I want to say that an effort was made to do that very thing, and all the roads joined in it, but we found it so complicated and so very difficult to do, that we never have had one publication that one could look at, properly indexed, and find a rate from Chicago to destination.

However, I would like to make the point, that, regardless of how you arrive at the rates, that the rates from Chicago are fixed through from that point to this territory that I refer to, outside of the pro-
rating points, in relation to the rates from St. Louis, and
760 that we were forced by the action of these roads that I spoke of, or one particular railroad in fact, and the other followed suit, to establish the same kind of an arrangement or division, so that we might make the same rates as the other fellow. It would have been unfair to our shippers if we had not done it.

The Big Four, the Monon and the Panhandle, and the C. & O. of Indiana, are at all times willing to establish through rates from Chicago to all this territory south of the river, provided there is a fair and equitable arrangement made for the division of such through rates; but to continually ask us to reduce our proportion in order to reduce through rates is unfair to us; and I would like to make a reference to the same situation that Mr. Stevenson did, that is, as to our rates to a junction point or a rate-breaking point as to proportions of through rates.

You will remember some of the biggest cases that have been before the Commission, so far as class rates are concerned were the Burnham-Hanna-Munger case which had to do with the rates from eastern cities in the Trunk Line territory to the Missouri River and West, and the Indianapolis Freight Bureau case, which had to do with the rates from Indianapolis to the Missouri River and West; and in each instance the Commission set forth that our rates were fair and equitable and while they reduced the through rates, in no instance did they reduce the Trunk Line or Central Freight Association rates.

I think, further, that it is of record that the Commission have com-

plimented us on our rates, that they were not excessive, our class rates, and our basis for making the rates is fair. We may have some adjustments that need straightening around a little bit, but as a general proposition I believe that we have the very lowest rates in existence in the world today in what is known as Central Freight Association territory.

761 Mr. Connell: Right there, Mr. Connelly, do you see any good reason why the Central Freight Association lines should be asked to accept anything less than their local rates on business destined to points south of the Ohio River when the Commission has approved their local rates as part of the through rates on business destined to points west of the Mississippi River?

Mr. Connelly: Speaking direct to the Bowling Green situation I do not like to go over the same thing, but I have prepared some figures and distances, but I want to again cite that important fact that was cited by Mr. Stevenson, that is to say, that while you would like to have a reduction of from 5 to 2 cents on the six classes from Chicago to Bowling Green, today your rates from Chicago to Bowling Green and distances in excess of one hundred miles greater than the distance from St. Louis to Bowling Green are very materially less from Chicago to Bowling Green than from St. Louis; and in making the division of the rates from Chicago to Bowling Green, we have to divide with another railroad, while rates from St. Louis are on a one-line haul.

Mr. Connell: Do you think, Mr. Connelly, that the fact that there are lines leading south from Chicago to the lower Ohio River gateways, and lines extending eastward passing through Nashville, which competition the lines passing through the upper Ohio River crossings are forced to meet, creates dissimilar conditions at Nashville which are not found at Bowling Green, and which would justify the application of lower proportional rates to Ohio River applicable on business for Nashville or this competitive point?

Mr. Connelly: Undoubtedly; and I want to make this clear again, that if there was a basis for dividing rates from Chicago to the South as we have in our own territory, there would be no necessity for any proportional rates, as they are termed, but we would publish a tariff from Chicago to these southern points, and it would

762 be founded on some kind of a percentage basis, after deducting the expense of crossing the river. This is merely a division so that our accounting department and our rate men, bill clerks and others, may readily know what we get out of these through rates from Chicago to the South. It is true they are published as proportional rates, but as a matter of fact it is simply the best figure we could get out of the through rates that were established from Chicago to that territory, and I cannot conceive of any reason why those figures should be used as base rates to points that were not affected by the change in the rates from Chicago.

Mr. Burger: From St. Louis, you mean?

Mr. Connelly: No sir, from Chicago. We do not serve St. Louis, or at least the Panhandle does not, and all my illustrations are on

Chicago, the question being as to the rates from Chicago to Bowling Green as compared with the rates from Chicago to Nashville.

Mr. Connell: Mr. Examiner, in connection with Mr. Connelly's testimony, or, rather in connection with your questions and his answers, I would like to call attention to some of the testimony taken in the case of the Bowling Green Business Men's Association vs. the Evansville & Bowling Green Packet Company, et al., I. C. C. Docket 6482. I would like to read into this record about two pages containing a statement made by Mr. Anderson, who, I understand, was one of the attorneys for the Bowling Green Business Men's Association, and associated with Messrs. Thomas.

Mr. Thomas: Can't you file it as an exhibit and furnish us a copy?

Examiner Thurtell: Can you file that as an exhibit?

Mr. Connell: Not now. I can refer to it if you have it.

Mr. Thomas: It is the rule to make copies and file it as an exhibit, and furnish the complainant a copy.

Mr. Connell: I can do that later.

763 Examiner Thurtell: If you can file that as an exhibit, it will save our taking it as part of the record.

Mr. Connell: What I refer to is found on pages 172, 173 and 174, and I will later file a copy of this as an exhibit and furnish copies to the complainants. Cross-examine.

Cross-examination:

Mr. Thomas: Why doesn't the system that you seem to favor of a proper division of the rates between the lines north of the river and south of the river, which would avoid these publications as proportionals, exist?

Mr. Connelly: For as long as I can remember, on all shipments going to points in the South other than what we term pro-rating points, such as Memphis, Vicksburg, New Orleans, Mobile, Pensacola and some other points, the lines south of the river have required the same rates as they require from the Ohio River points proper.

Mr. Thomas: I don't want to ask any further questions.

Examiner Thurtell: Are there any further questions, Mr. Connell?

Mr. Connell: Mr. Connelly, as a matter of information, you spoke a few moments ago about pro-rating points: You referred there to points along the Mississippi River like Vicksburg and Natchez, did you?

Mr. Connelly: Yes sir.

Mr. Connell: And New Orleans?

Mr. Connelly: Yes sir.

Examiner Thurtell: To those points the rates from Chicago, which are participated in by two or more lines, are divided upon a

764 mileage basis, are they?

Mr. Connelly: Yes sir; also Mobile, Pensacola, Meridian and other points. I have just mentioned prominent points.

Mr. Thomas: Meridian, Mississippi?

Mr. Connelly: Yes sir.

Mr. Connell: Is there anything further you want to state?
Mr. Connelly: I believe that is all.
Mr. Connell: I guess that is all.
(Witness excused).
Mr. Connell: I want to make a statement, Mr. Examiner, that the testimony that we have offered here today has been offered on behalf of all of the lines operating north of the Ohio River, that is, the Central Freight Association lines.
Mr. Cardy: In addition to this testimony, I think we would like to also have admitted the testimony offered in the former case, showing the different conditions existing at Nashville, compared with the conditions which exist at Bowling Green, with reference to the rates from Chicago or those from the West.
Examiner Thurtell: That is, the testimony taken in the original case.
Mr. Cardy: Yes sir.
Mr. Burger: I understand the record in the old 4310 has been stipulated into this one.
Examiner Thurtell: Well, it has not been so stipulated, but there is only a certain portion of this that was reopened. It would be perfectly proper, I think, to stipulate that any of that testi-
765 mony which is particularly pertinent to that portion of the case which we have before us should be made part of the record.
Mr. Burger: In the old 4310, which reaches to the Third Section of the Act, and the hearing upon the Fourth Section application of Agent Fulton, which reaches to the Fourth Section of the Act, we think the question of competition is very material, that is, that the competition which we showed particularly in the hearing of 4310 existed at Nashville, and contending that the same competition did not exist at Bowling Green. That portion of the old 4310 is the one that we want considered in this case that is being heard today. Is that correct?
Mr. Thomas: I don't understand that it is an open question, whether the conditions are different at Bowling Green than Nashville. It is limited to the inquiry, whether or not these proportionals should be granted to Nashville and not to Bowling Green under the findings as found by the Commission.
Examiner Thurtell: I would not say that matters of fact were closed by the record; that is, there might be facts bearing upon the particular question that the Commisson has set down for hearing today.
Mr. Thomas: But not the similarity of conditions.
Mr. Burger: The Commission stated that if the same circumstances and conditions did not exist at Bowling Green the same as at Nashville, they should, because of the presence of a navigable stream at Bowling Green the same as at Nashville, and that perhaps the reason for the competition at Bowling Green not being as strong and controlling as at Nashville, was perhaps due to a community of interest existing between the Louisville and Nashville Railroad and the Evansville & Bowling Green Packet Company, and on that point

I want to stipulate into this record as an exhibit seven pages
766 of I. C. C. Docket 6482, being the case of the Bowling Green Business Men's Protective Association vs. Evansville & Bowling Green Packet Company, heard in this building on March 2nd, 1914. I will submit two copies for the Commission, being pages 213 to 218, inclusive, and a portion of the testimony of Mr. Lee Howell, President of the Evansville & Bowling Green Packet Company.

Mr. Thomas: Mr. Examiner, we do not concede that the question of the domination influence of the Louisville & Nashville Railroad Company, or the railroad influence over the boat line, is an open question in this case, I. C. C. Docker 4310, therefore we cannot concede that he may do that. He can offer it and the objection can be noted.

Examiner Thurtell: Very well.

Mr. Burger: This reaches to the question of competition, you understand, Mr. Examiner.

Mr. Cardy: What is the understanding as to the testimony offered in 4310, as to whether it will be considered part of this case?

Mr. Thomas: This is not 4310. This is another case.

Examiner Thurtell: So far as the testimony in this docket is concerned, that part of it, if there is any, which will go toward the reasonableness and lawfulness and propriety of the continuance of the scale of proportional rates from points in Central Freight Association territory up to the Ohio River Crossings, which are less on Nashville business than on Bowling Green business, that might properly be stipulated into this record. That is the question that is before us, if there is anything here that might touch that point.

Mr. Cardy: There is no objection to that, I understand.

Mr. Thomas: No, anything that is in that docket that is competent or relevant to this issue I think belongs in here.

Let me state a little further about this in order to get it in
767 the record, Mr. Examiner: One of the charges in the original complaint which is now reopened upon certain issues was, the dominating influence of the railroads over the river traffic. The defendant lines in this case had the opportunity to introduce Mr. Lee Howell as a witness, and did not see fit to do so. Now, then, we insist that it would be contrary to the rules of evidence or of law to admit his testimony taken in another case to be introduced into this case after this case has been decided upon that issue by a stipulation.

Examiner Thurtell: Mr. Thomas, aren't you in error in stating that the reason why Mr. Howell's testimony was not taken in the original case—it was testified, I will say in that case, that Mr. Howell was very sick, that he was unable to be present, and that he was unable to even have his deposition taken.

Mr. Thomas: I said they had an opportunity to offer it and they did not offer it. I had forgotten about them saying they did not have an opportunity to take his deposition, but it would not come in here anyhow, because as a matter of fact—I don't know whether the same rules prevail here as prevail in court—that would be ground

for a continuance until you could get his evidence; but if you rested your case and closed your case, the fact that you did not get him, that he was sick and you could not get him, could not be taken advantage of thereafter to introduce his evidence taken in another case on another issue.

Examiner Thurtell: I will have to accept this statement, and your objection to it will be noted. If there is anything in that which is pertinent to the issue raised here, the Commission will consider it.

Mr. Thomas: That is all right. I just want to note the objection.

768 (Said copy of Lee Howell's testimony, so offered and identified, was received in evidence and thereupon marked "Burger Exhibit 1, received in evidence April 14, 1914," and is attached hereto.)

Mr. Connell: That is all for the carriers.

769 H. S. FUNK was called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. Thomas: What is your name?
Mr. Funk: H. S. Funk.
Mr. Thomas: Your age?
Mr. Funk: 42.
Mr. Thomas: Where do you reside, Mr. Funk?
Mr. Funk: Bowling Green.
Mr. Thomas: What business are you engaged in?
Mr. Funk: Hardware and implements.
Mr. Thomas: How long have you been engaged in such business?
Mr. Funk: Been in Bowling Green about seven years.
Mr. Thomas: Please examine these papers and see if you can find in there a shipment which you had from any point in Indiana on which you were charged a greater rate than is charged on a like shipment to Nashville, Tennessee, from the same point of origin.
Mr. Funk: South Bend—a shipment of plows.
Mr. Thomas: When was that?
Mr. Funk: That was in October, 1913.
Mr. Thomas: What is the difference in the rate between the rate to Bowling Green and the rate to Nashville?
Mr. Funk: Five cents.
Mr. Thomas: Did you take that matter up by correspondence with anybody?
Mr. Funk: Yes sir, I did.
Mr. Thomas: With whom first?
Mr. Funk: The first communication was with Mr. Compton. My recollection is, at Louisville.
770 Mr. Thomas: Louisville, Kentucky?
Mr. Funk: Yes sir.
Mr. Thomas: Did he verify the charge made as being correct?

Mr. Funk: The charge as shown, yes sir.
Mr. Thomas: What was that charge?
Mr. Funk: You have reference to the rate or the amount?
Mr. Thomas: The rate and the amount.
Mr. Funk: 30-cent rate on a shipment of a 22,000-pound car, $67.80.
Mr. Thomas: Is that a carload lot?
Mr. Funk: Yes sir.
Mr. Thomas: Please state what the rate was to Nashville for the same shipment.
Mr. Funk: 25 cents.
Mr. Thomas: As compared with 30 to Bowling Green?
Mr. Funk: Yes sir.
Mr. Thomas: What do you get from South Bend in your line of business?
Mr. Funk: In this particulor case it was plows.
Mr. Thomas: What do you handle out from South Bend?
Mr. Funk: Plows.
Mr. Thomas: Do you handle anything from any other Indiana points?
Mr. Funk: Out of South Bend we handle ranges; out of Anderson we handle wire and nails. De Kalb, I believe is not in Indiana. Several of those mills—I will give you a list of the points of origin I told you of, Anderson, De Kalb, Waukegan and Cleveland.
Mr. Thomas: De Kalb, Illinois?
Mr. Funk: Yes sir.
771 Mr. Thomas: Was this matter taken up with the Interstate Commerce Commission?
Mr. Funk: Yes sir.
Mr. Thomas: This is the case and the correspondence that originated this hearing?
Mr. Funk: Yes sir.
Mr. Thomas: That is all I want to ask.

Cross-examination.

Mr. Connell: Mr. Funk, is the rate which was applied on these shipments from Anderson to the Ohio River any different when the traffic is destined to Bowling Green than when it is destined to Nashville?
Mr. Funk: I have never had the rate compared on that article.
Mr. Connell: How about Cleveland?
Mr. Funk: Nor that, but it was wire fence in that rate, and nails.
Mr. Connell: These shipments to which you have referred from South Bend, you say, were a carload of plows?
Mr. Funk: Yes sir.
Mr. Connell: Who was the shipper?
Mr. Funk: Oliver Chilled Plow Works.
Mr. Connell: Who paid the freight?
Mr. Funk: I paid it.
Mr. Connell: You paid the freight?
Mr. Funk: Yes sir.

Mr. Connell: Don't the Oliver Chilled Plow Works sell all their goods delivered?

772 Mr. Funk: Not at all, so sir.

Mr. Connell: There is a difference in the rate on your stoves or ranges from South Bend?

Mr. Funk: I suppose so, but I really—I could not tell you the rate on——

Mr. Connell: You don't know whether there was any difference in the rate?

Mr. Funk: No, I do not recall. Perhaps I did not have that stuff at the time under the old rate.

Mr. Connelly: What was the rate that you looked up where the rates were different to Bowling Green and Nashville, simply this one instance?

Mr. Funk: That is the only instance, yes sir.

Mr. Connell: From South Bend?

Mr. Funk: Yes sir.

Mr. Connelly: In all shipping points north of the river, the only difference you found in the charges of the lines north of the river or shipments to Bowling Green as compared with Nashville, was on a carload of plows from South Bend, Indiana?

Mr. Funk: Here was the idea: The only case in which we had the matter up and had correspondence. There has been a difference in other lines that we have gotten; for instance, wire fence, a difference between the old and the new.

Mr. Connell: From Anderson?

Mr. Funk: Any point.

Mr. Connell: What do you mean, a difference in the rate in the old and the new?

Mr. Funk: We paid under the old rate 38 cents.

Mr. Connell: That is from the Ohio River?

Mr. Funk: Yes sir—no, from the mills.

773 Mr. Connell: Are you talking about Anderson now, or Pittsburgh?

Mr. Funk: Any of those points of origin.

Mr. Connelly: Let me question him just a moment.

You say that our charges from Pittsburgh to Louisville are greater on Bowling Green business than on business to Nashville?

Mr. Funk: No, I did not say that.

Mr. Connelly: Do you say that our charges from Youngstown to Louisville are greater on Bowling Green than Nashville?

Mr. Funk: I did not say that.

Mr. Connelly: Do you think so?

Mr. Funk: I have no way of knowing except as to these cases that I have had my attention drawn to.

Mr. Connelly: Do you ever have anything from Cleveland?

Mr. Funk: Only wire fence and nails.

Mr. Connelly: You would not say that the Big Four or any of the other railroads serving Cleveland charge any more to Louisville on shipments to Bowling Green than to Nashville?

Mr. Funk: I could not say so. The rate is lower than it was originally.

Examiner Thurtell: Did you compare that rate to Bowling Green with the rate that is applicable upon the same business originating at the same points going to Nashville?

Mr. Funk: No sir, I did not.

Examiner Thurtell: You don't know whether you pay more than Nashville or not?

Mr. Funk: In reference to the wire fencing——

Examiner Thurtell: The only point on which you based the complaint was this one shown here?

Mr. Funk: Yes sir.

774 Examiner Thurtell: That came from South Bend?

Mr. Funk: Yes sir.

Examiner Thurtell: That, you say, you knew the rate is higher to Bowling Green than it is to Nashville?

Mr. Funk: Yes sir.

Mr. Connelly: I would like to say, Mr. Examiner, that I know positively that our charges from all that vast territory are exactly the same to Louisville, or in fact to Cincinnati—the rates usually make on Louisville, but our charges on shipments going to Bowling Green are identical with our charges on a shipment going to Nashville from all that vast territory.

Mr. Thomas: You mean Pittsburgh?

Mr. Connelly: Yes sir.

Mr. Thomas: I know, but I want to show that in all this stuff that he could find only one instance.

Mr. Thomas: That is not germane to the point.

Examiner Thurtell: He said he had not examined any of them.

Mr. Connelly: He mentioned Cleveland.

Mr. Thomas: Not in there.

Mr. Connelly: Anderson.

Mr. Funk: I beg your pardon. I only mentioned Anderson and Cleveland and the other points as points from which we had at times got shipments.

Examiner Thurtell: But you are not complaining about your rates from those points?

Mr. Funk: No sir, no complaint except about this one right here.

Mr. Thomas: This is the only one you have examined?

Mr. Funk: Yes sir.

Mr. Thomas: And had it brought directly to your attention?

775 Mr. Funk: Yes sir.

Mr. Thomas: That is all I wanted to ask him, as an illustration of the situation.

Mr. Connell: How many shipments—how many carloads a year do you get from South Bend?

Mr. Funk: I should say on an average three cars, three and four cars a year.

Mr. Connell: Plows and implements, or just plows?

Mr. Funk: Plows and implements—yes, cultivators.

Mr. Connell: Where do you dispose of those?

Mr. Funk: Locally.
Mr. Connell: That is all.
Mr. Thomas: How many hardware firms are there in Bowling Green?
Mr. Funk: Five.
Mr. Thomas: That is all.
Mr. Connell: You are a local hardware dealer?
Mr. Funk: Yes sir.
Mr. Connell: That is all.

(Witness excused.)

Mr. Thomas: Mr. Examiner, we only desired to introduce Mr. Funk to give an illustration of a concrete case as to the working of this proportional. We have other merchants here who would testify as to where they buy in this territory, Chicago, Indianapolis and other like territory, but in view of the evidence offered by the railroads to justify their position in charging this rate—I mean in giving Nashville the advantage of this proportional, we are willing to submit our case on the evidence offered.

776 Examiner Thurtell: Do you desire to brief this case?

Mr. Connell: We are not quite through. We want to recall Mr. Connelly to explain the application of the Chicago rate from South Bend.

M. S. CONNELLY was recalled, and having been previously sworn, further testified as follows:

Mr. Connell: If you will go ahead and do that from where you sit.

Mr. Connelly: I made my illustration on Chicago, taking it for granted that all of us understand that when a rate is fixed from Chicago, it automatically carries with it a certain group of points. It also carries Milwaukee with it at a certain arbitrary charge, and the rates in the group are fixed automatically. When Chicago is advanced or lowered, all of the rates at other points are advanced or lowered, and that is a special reason why there is the same difference in a shipment from South Bend, as if it had been shipped by the International Harvester Company of Chicago. In other words, the Oliver Chilled Plow Company probably competes with the International Harvester Company, and the rates from Chicago and South Bend are the same to practically all the South, and the same illustration would have been good had Mr. Funk purchased those agricultural implements from the International Harvester Company and shipped from Chicago.

Mr. Thomas: I gave it as a typical case.

Mr. Connell: There are some of the largest agricultural implement manufacturers located at South Bend, and the International Harvester Company is located at Chicago?

Mr. Connelly: Yes sir.

777 Mr. Connell: And those two points are given the same rates?

Mr. Thomas: We don't deny that the case given by Mr. Funk is typical.

(Witness excused.)

Examiner Thurtell: Do you desire to brief this case?

Mr. Connell: Certainly, I want to brief the case, and we want to argue it.

Mr. Burger: Will you please let the record show that the Louisville & Nashville Railroad desires oral argument?

Mr. Connell: This is a most important case on the part of the railroads, and I really think it ought to be argued.

Mr. Connelly: Mr. Examiner, I will say this, that if, as a result of this, the Commission should say that these proportionals of the through rates to the South should become base rates to the river, and especially from Chicago to points in the State of Kentucky, it would mean possibly $250,000.00 a year difference.

Mr. Connell: It is not only the city of Bowling Green that is affected by this.

Mr. Thomas: Mr. Examiner, we should be glad to brief it, but we do not see the necessity of having any oral argument on this proposition. The original case has been argued orally before the Commission.

Examiner Thurtell: Do you desire to brief it?

Mr. Connell: We desire to brief the case, and we desire oral argument.

Examiner Thurtell: Mr. Thomas, do you care to brief this any further?

Mr. Thomas: Yes sir, we will be glad to brief it, but we do not desire to have any oral argument.

778 Examiner Thurtell: I am rather desirous—while I haven't any instructions from Commissioner Meyer with regard to it, I am rather desirous of getting this closed up in such a way that it may be disposed of before vacation, and I would not want to let this time for briefs run too long on that account. This is a little bit mixed. So far as the original case is concerned, and this reopening, the complainant would have the opening brief, but so far as the Fourth Section feature is concerned, the railroads would have the opening brief. Perhaps, considering the way it has been presented along the line of the Fourth Section applications, it will be as well if the railroads present the opening brief, and let Mr. Thomas have the closing brief.

Mr. Connell: If we present the opening brief, don't we have a closing brief, a reply brief?

Examiner Thurtell: Do you want a reply brief?

Mr. Connell: You have not said that we could have oral argument. We want——

Examiner Thurtell: I cannot tell you about that. The Commission will assign it for argument if they can find a date for doing it. I cannot set a date for oral argument, or I cannot say that you will or will not have an opportunity for oral argument, but how long would it take to brief it?

Mr. Connell: Thirty days at least.

Examiner Thurtell: The first brief?

Mr. Connell: Yes.

Examiner Thurtell: We will put it this way: The briefs for the railways will be due on May 14th, and the complainants may have

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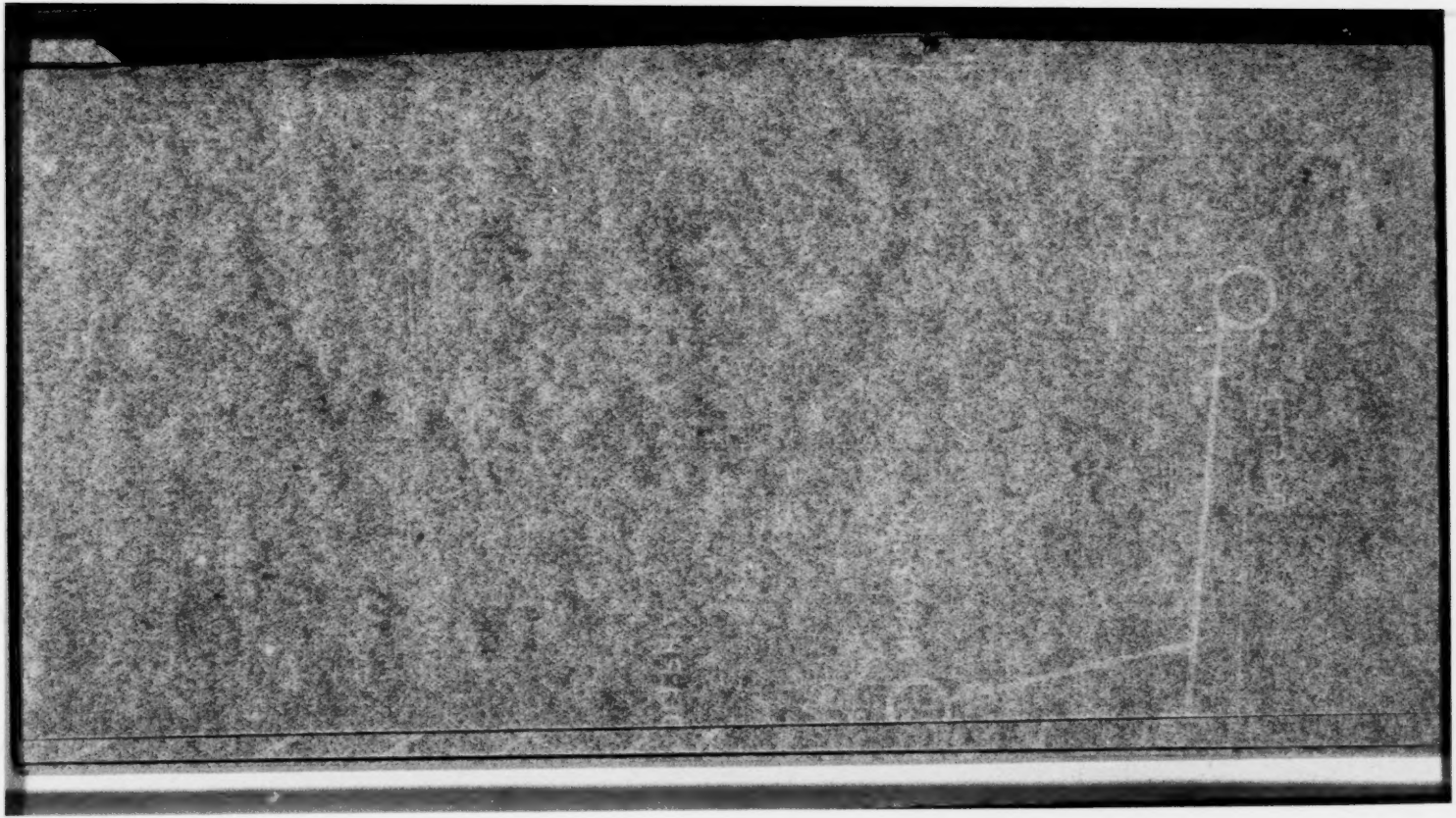

fifteen days' time from the receipt of that brief to file a reply brief, if you desire to reply, and I will ask the Commission to assign it for oral argument if a date can be found.

Mr. Connell: How about a reply brief on behalf of the car-
779 riers? I think we are entitled to that, regardless of whether we are allowed oral argument or not.

Examiner Thurtell: You may have until June 10th for filing a reply brief. The case will be closed.

(Whereupon, at 2:35 o'clock P. M. on the 14th day of April, 1914, the hearing of the above entitled matter was closed.)

(Here follows map marked page 780.)

781 Proceedings of Meeting Between Committee of St. Louis-Ohio River Lines, Appointed by Executive Officers at New York Meeting on April 11, 1905, and the Chicago-river Lines (Interested) to Consider the Question of Request for Reduction of Freight Rates from St. Louis, Mo., and Chicago, Ill., to Southeastern Points, Held at the Auditorium Hotel, Wednesday, April 19, 1905.

Meeting called to order at 11:15 A. M. with the following attendance:

Frisco System, Mr. E. K. Voorhees, G. P. A.

Big Four Route, Mr. C. J. Grammer, V. P.

Monon Route, Mr. W. H. McDoel, Pres., and C. H. Rockwell, T. M.

Penna. Lines, Mr. Jos. Wood, V. P. and Mr. D. T. McCabe, F. T. M.

C., H. & D., Mr. F. A. Wann, Vice-President.

Ill. Cent., Mr. J. T. Harahan, 2nd V. P., Mr. T. J. Hudson, Traf. Mgr., and Mr. W. E. Keepers, G. F. A.

Southern Ry., Mr. T. C. Powell, 5th V. P.

M. & O. R. R., Mr. H. Miller, G. F. A., and Mr. F. W. Birchett, A. G. F. A.

Q. & C. Rte., Mr. W. J. Murphy, V. P.

Mo. Pac. R. R., Mr. J. C. Lincoln, G. F. A.

L. & N. R. R., Mr. W. J. Dickinson, 3d Vice Pres.

Mr. T. C. Powell was chosen Chairman of the meeting.

Mr. Dickinson, as Chairman on the Committee of St. Louis-Ohio River lines, stated to those present the purpose of the meeting as set forth in the following recommendation:

Recommended, an adjustment of rates from E. St. Louis to Southeastern Territory, based on the following figures higher than the rates from Cairo:

782

1	2	3	4	5	6
23	19	17	12	10	8

which will make reduction of

5	4	3	2	2	2

and Motion:

"Moved that a committee consisting of representatives of the Louisville and Nashville R. R., Illinois Central Railway, Frisco System, Southern, Mobile and Ohio, Cincinnati, New Orleans and Texas Pacific and Missouri Pacific be appointed for the purpose of conferring with the executive officers of the lines extending between Chicago and the Ohio River crossings, advising them of the action of the meeting and endeavoring to bring about a relative adjustment in the proportional rates between Chicago and the Ohio River crossings, advising them of the action of the meeting and endeavoring

to bring about a relative adjustment in the proportional rates between Chicago and the Ohio River crossings, i. e., Cincinnati, Jeffersonville, Louisville, Evansville, Cairo and Paducah, the reductions to become effective on a common date, not later than May 15, 1905."

After some discussion on the subject, the following motion was made by Mr. McDoel, which was duly seconded and carried:

"That the Chicago and Ohio River lines confer together and advise the general meeting of what action they will take in the matter *for* rates between Chicago and the Southeast."

The committee of Chicago-Ohio River lines, after conference among themselves, presented the following to the general meeting:

"Whereas the contention of the Chicago and St. Louis Commercial Trade — for a reduction in rates for the Southeastern territory that will have some proper relation to the rates from New York to the same territory, and whereas in answer to this demand it is proposed to make a reduction from East St. Louis to the Southeastern territory based on 5, 4, 3, 2, 2, 2, cents per 100 pounds, all of which is to come out of the proportion north of the Ohio River, and it is now proposed to make corresponding reduction from Chicago, all to come out of north of the Ohio River proportion, and whereas in our judgment this reduction is only begging *with* the situation and does not answer the purposes of the demand for reduction, therefore, Be it resolved, that we declare as a principle that the rates from Chicago be not greater than the rates from New York to what is called the Green Line Territory, and until such arrangement is made we protest against the proposed reduction from East St. Louis being made operative.

Be it Further Resolved: That it is the sense of the Chicago Ohio River Lines that they are in favor of making any reasonably fair reduction in rates from their territory to the territory of the Southeast on the condition that the same rates be divided between the carriers north and south of the Ohio River on an equitable basis.

Mr. Harahan, representing the Illinois Central R. R., and Mr. Voorhees, representing the Frisco System, requested to be put on record as not voting on the proposition submitted by the Chicago-Ohio River Lines.

783 The St. Louis, Ohio River Committee, received the report of the Chicago-Ohio River Committee and stated that the same would be submitted to the Executive Officers at a general meeting to be called at some future date, and it was understood by those present that the Chicago-Ohio River lines would be advised of action taken by the St. Louis-Ohio River Committee on rates from East St. Louis to points south of the Ohio River."

On motion the meeting adjourned.

T. C. POWELL, *Chairman.*

784 EXHIBIT A.

List of Commodities on Which Rate Applicable from Chicago to Ohio River Crossings on Traffic Destined Nashville, Tenn., Is the Same as Applied on Like Traffic from Chicago to Ohio River Crossings on Traffic Destined to Bowling Green, Ky.

Commodity.	Rate.
Beet Pulp, wet, C. L. Min. 40,000 lbs.....	8½¢ per 100 lbs.
Board, Binders', Box, Chip, Straw, Wood Pulp, not corrugated or indented, min. wt. 40,000#.....	10¢ " " "
Books, N. O. S. Boxed, Min. Wt. 30,000#...	25¢ " " "
Books, Tissue, Copying, in Blds., crates or boxes, C. L. Min. 30,000#.....	15¢ " " "
Books, Tissue, Copying, in Blds., crates, or boxes, L. C. L.....	25¢ " " "
Books, School Composition, or School Copying in Bundles, Packages, C. L. Min. 30,000#..	15¢ " " "
" L. C. L.....	25¢ " " "
Boxes, Paper, K. D., flat in bundles, boxes or crates, C. L., Min. 30,000#.....	12¢ " " "
Butter, Butter Grease, Butterine, and Oleomargarine, L. C. L.....	34¢ " " "
Canned Goods, classified 5th Class in Sou. Classn.....	15¢ " " "
Canned Fish, Fruits and Vegetables, not desi-cated and canned hominy, L. C. L.....	20¢ " " "
Cigars and Cigarettes, boxed, L. C. L.....	40¢ " " "
Compounds, Paint and Varnish, removing, in metal cans, L. C. L.....	25¢ " " "
Electrical machinery Appliances and supplies, min. 30,000#.....	15¢ " " "
Envelopes, N. O. S. in cases, min. 20,000#...	15¢ " " "
Food Preparations, Cereal, N. O. S. in sacks, C. L.	12¢ " " "
Food Preparations, Cereal, N. O. S. in sacks, or boxes, L. C. L.	17¢ " " "
Food Preparations, Cereal, N. O. S. in kegs, barrels or drums, L. C. L.	15¢ " " "
Furniture, viz: Beds, iron or brass, metal couches or davenports, N. O. S. Bed Springs, compressed, Mattresses and cots, metallic, cribs, folding, wooden folded & flat, chairs, folding wooden, folded flat, straight or mixed, C. L., Min. 24,000#.....	15¢ " " "
Metal Beds, Metal Couches, or Davenports, N. O. S. metallic springs; metallic and woven wire mattresses; metallic cots and cribs in straight or mixed C. L., minimum 20,000#.	15¢ " " "

Desks and Seats, School, folded, C. L. Min. 20,000#	17¢	"	"	"
Desks and Seats, School, folded C. L., Min. 24,000#	17¢	"	"	"
Fountains, viz: Soda, C. L. Min. 15,000#	29¢	"	"	"
N. O. S. Granite, Marble or Stone in boxes or Crates, Min. 36,000#	15¢	"	"	"
785 N. O. S. Granite, marble or Stone in boxes or Crates, L. C. L.	25¢	"	"	"
Gelatine, N. O. S. in boxes, barrels or casks, L. C. L.	20¢	"	"	"
Glass and Glass Ware, viz:				
Fruit Jars and Tops, C. L.	15¢	"	"	"
Jelly Glasses and Glass Tops, C. L.	15¢	"	"	"
Glass, rough, for Skylights, C. L.	15¢	"	"	"
Glass, Window, C. L.	15¢	"	"	"
" " boxed, L. C. L.	20¢	"	"	"
Grain Products (Reshipping Rate)	8¢	"	"	"
Hardware, N. O. S., C. L. Min. 30,000#	17¢	"	"	"
" " L. C. L.	25¢	"	"	"
" Locks, N. O. S., C. L.	17¢	"	"	"
" " " L. C. L.	25¢	"	"	"
Labels, Paper, Plain or Printed, Min. 36,000#	12¢	"	"	"
Latches, in boxes, C. L. Min. 24,000#	17¢	"	"	"
Medicines, N. O. S., C. L. Min. 24,000#	25¢	"	"	"
Milk, Condensed and Evaporated, (except fresh), in cans, boxes, etc., Min. 30,000#	15¢	"	"	"
Milk, condensed, evaporated, (except fresh), in cans, boxes, etc., L. C. L.	20¢	"	"	"
Molasses, in syrup, including glucose and corn syrup, C. L.	15¢	"	"	"
Packing House Products, viz:				
Cattle, Switches or Tolls, Gr. Salted, C. L., 25,000#	12¢	"	"	"
Hides, Calf, Beef, or Horse, Green Hog Skins, Gr. in *Blds.* or Pkld. Hide Pates or Scrap; Sheep Pelts or Skins, Green, Loose or tied in bundles; sheep skins, pickled, straight or mixed, C. L. 25,000#	12¢	"	"	"
Casings, Sausage in Brls. or Tissues L. C. L.	20¢	"	"	"
Meats, cooked, in brls. buckets (without hdls. and with solid tops), boxes or crates, L. C. L.	20¢	"	"	"
Meats, fresh, viz: Boneless, chucks, shank, meat, cheek meat, beef or pork trimmings, boneless veal, salted in boxes or barrels; value not expressed L. C. L.	40¢	"	"	"
The same valuation not exceeding 8¢ per #	25¢	"	"	"

Meats (not desic-ated) in cans, boxed, meats potted in cans, boxed meats with vegetable ingredients in bbls. boxed; meats salted in glass, boxed; pork and *beets* in cans, boxed; sausage in cans boxed, soups and broths in cans boxed, L. C. L..... 20¢ " " "

Packing House Products, viz: cont.—

Sausage, Bologne or smoked, in boxes, kegs, barrels, or sacks, L. C. L..... 20¢

Tripe, pickled, in kegs or barrels, L. C. L... 20¢

Paper, Bldg. & Roofing: Asbestos paper, dry felt paper; with which may be shipped liquid cement; roof coating, pitch, coal tar, tin R. Caps, Nails and Metal Cleats..... 10¢

Powder, common, black, blasting, C. L. 20,000# ..... 34¢

Salt in pasteboard cartons, packed in cases, C. L. 30,000#..... 12¢

Salt in brls. and kegs st. or mixed, C. L. 37500# ...

Salt in " and in bulk in bags, C. L. 40,000,# 9¢

Automatic, Boxed or crated, N. O. S. not boxed (Scales and Scale Beams and Scale Weights, L. C. L.)..... 34¢

Hopper, portable, K. D., Boxed, N. O. S..... 25¢

Hopper, Stationary, K. D., Platform, Stationary K. D. Wagon or Truck, K. D.; scale beams and weights ..... 25¢

Shingles, Asphalt, in bundles or boxes, C. L. Min. 36,000# ..... 12¢

Soap in packages, L. C. L., classified N. O. S. in official classn. ..... 20¢

Soda, viz:

(Sodium) Bicarbonate of; bisulphate of, Sal. C. L. 40,000# ..... 10½¢

Ash, caustic, Silicate of, Soda Crystals, Sulphate of, and crude, C. L. 40,000#..... 10¢

Stove Pipe Material: (Stove Pipe, Side Seams not closed) Stove Pipe elbows, straight or mixed, C. L. 36,000#..... 15¢

Stoves, (except Alcohol, gas, gasoline, oil or vapor stoves) Stove furniture and hardware, C. L. ..... 15¢

Same, L. C. L. (except sheet iron stoves)... 25¢

Twine, Binding or Cord for Harvesters, C. L. 30,000# ..... 12¢

Vehicle Parts, viz

Finishes, detachable parts removed, Bodies self-propelling and packed together or nested, C. L. 10,000#..... 40c

Same, unfinished, C. L. 10,000#..... 34¢

Wall Plaster, Wall Boards, Plaster Board and Stucco, C. L. 40,000 lbs..... 10¢
Window Shades and Window Shade Cloth, A. Q. ..... 29¢
Wrappers, paper, N. O. S. printed C. L. 36,000# 12¢

Interstate Commerce Commission.
Docket No. 4300—Exhibit No. 1.
Witness—Stevenson.
Date—Apr. 14/14.
Reporter—Brady.

787 EXHIBIT B.

List of Commodities on which Rate Applicable from Indianapolis to Ohio-river Crossings on Traffic Destined Nashville, Tenn., is the Same as Applied on Like Traffic from Indianapolis to Ohio-river Crossings on Traffic Destined to Bowling Green, Ky.

	Rate.
Beet Pulp, wet, C. L. Min. 40,000#.....	5½¢
Board, Binders, Box, Chip, Straw, Wood Pulp; not corrugated or indented, C. L. 40,000#.....	6½¢
Books, N. O. S., Box- C. L., Minimum 30,000#.....	19½¢
Books, Tissue, Copying, in bundles, crates or boxes, C. L. minimum 30,000#.....	9½¢
Books, Tissue, copying, in bundles, crates or boxes L. C. L.	19½¢
Books, School Composition, or School copying, in bundles or packages, C. L. 30,000#.....	9½¢
Books, School Composition or School copying, in bundles or packages, L. C. L.....	19½¢
Boxes, Paper, K. D., flat, in bundles, boxes or crates, C. L. 36,000#	8¢
Canned Fish, Fruits and Vegetables, not dessic-ated, and canned Hominy, boxed, L. C. L.....	15½¢
Cigars and Cigarettes, L. C. L., boxed, etc.....	25¢
Compounds, paint and varnish removing in metal cans, in crates, in metal cans, in barrels, or boxes, L. C. L.....	19½¢
Electrical Machinery, Appliances and Supplies, C. L. 30,000#, List A, Item 164.....	9½¢
Envelopes, N. O. S. in cases, C. L. 26,000#.....	9½¢
Food Preparations, Serial N. O. S. in Sacks, or boxes, L. C. L.	12½¢
Food Preparations, Serial N. O. S. in Kegs, barrels or drums, L. C. L.....	9½¢
Furniture, viz:	
Beds, Iron or Brass, metal couches or Davenports, N. O. S. beds, spring, compressed mattresses or cots, metallic cribs, folding, wooden folded flat; chairs, folding wooden, folded flat; straight or mixed, C. L. 24,000#	12½¢

Metal beds, metal couches or Davenports, N. O. S. Metallic springs, metallic and woven wire mattresses, Metallic cots and cribs, in straight or mixed, C. L. 20,000#	9½¢
Desks and seats, school, folded, C. L. 20,000#	12½¢
Fountains, viz:	
Soda, C. L. 15,000#	19½¢
N. O. S. Granite, marble or stone in boxes or crates, C. L. 36,000#	9½¢
788 N. O. S. Granite, marble or stone, in boxes or glass crates, L. C. L.	19½¢
Glass and Glassware, viz:	
Glass rough for Skylights, C. L.	9½¢
Glass, window, C. L.	9½¢
Glass, window, boxed, L. C. L. 1	15½¢
Grain and Grain Products, viz:	
Grain Products, C. L.	6¢
Hardware, N. O. S. C. L. 30,000#	12½¢
" " L. C. L.	19½¢
" Locks, N. O. S. in Official Classn. C. L.	19½¢
" " " " " " L. C. L.	19½¢
Labels, Paper, Plain or printed, not lithographed or embossed, in boxes, bundles or crates, C. L. 36,000#	8¢
Matches, in boxes, C. L. 24,000#	12½¢
Medicines, N. O. S. C. L. 24,000#	19½¢
Milk, Condensed or Evaporated, in cans, boxed, kegs, barrels, or half-barrels, L. C. L.	15½¢
Molasses and Syrup, inc. glucose or corn syrup, in wood or cans, boxed, C. L. (does not include fruit juices or fountain syrups)	9½¢
Packing House Products, viz:	
Cattle, switches or tails, green salted, C. L. 25,000#	8¢
Hides, calf, beef or horse, green hog skins, green, in bundles or pkld., Hide pates; scrap; sheep pelts or skins, green, loose or tied in bundles; sheep skins, pkld., straight or mixed, C. L. 25,000#	8¢
Casings, Sausage, in barrels or tierces, L. C. L.	15½¢
Meats, cooked, in barrels, buckets, (without handles, and with solid tops), boxes or crates, L. C. L.	15½¢
Meats, fresh, viz:	
Boneless chuck, shank meat, chuck meat, beef or pork trimmings, boneless veal, salted in boxes or barrels, but not expressed, L. C. L.	25¢
Meats, (not dessicated) in cans, boxed, meats potted in cans, boxed, meats with vegetable ingredients, in cans, boxed; meats, sliced in glass, boxed; pork and beans in cans, boxed; sausage in cans, boxed, soups and broths in cans, boxed, L. C. L.	15½¢
Sausage, Bologna or smoked, in boxes, kegs, barrels, L. C. L.	15½¢

	Tripe, pkld. in kegs or barrels, L. C. L.	15½¢
789	Powder, Common, black, blasting, C. L. 20,000#	22¢
	Salt in pasteboard cartoons, packed in cases, 30,000#	
"	in barrels and kegs, straight or mixed, C. L. 37,500	8¢
"	in barrels and in bulk, in bags, C. L. 40,000#	5¢
	Scales and Scale Beams, and Scale Weights, L. C. L. viz:	
	Automatic, boxed or crated, N. O. S. not boxed	22¢
	Hopper, portable, K. D. boxed, N. O. S.	19½¢
	Hopper, stationary, K. D. Platform, stationary, K. D.	19½¢
	Soap, in packages, L. C. L. classified, N. O. S. in Offl. Classn.	15¢
	Soda, viz:	
	(Sodium, bo-carbonate of; bi-sulphate of; Sal. C. L. 40,000#	
	Ash, Caustic, Silica; Soda Crystals, Sulphate of, and Crude, C. L. 40,000#	7¢
	Stove Pipe Material (Stove Pipe, Side Seams, not closed); stove pipe elbows, straight or mixed, C. L. 36,000#	9½¢
	Stoves, (except Alcohol) gas, gasoline, oil or vapor stoves), stove furniture and hardware, C. L.	9½¢
	Same, L. C. L. (except sheet iron stoves),	19½¢
	Twine, binding or cord, for harvesters, C. L. 30,000#	8¢
	Vehicle Parts, viz:	
	Finished, detachable parts, removed bodies, self-propelling and packed together, or nested, C. L. 10,000#	25¢
	Same, unfinished, C. L. 10,000#	22¢
	Wall Plaster, Wall Board, Plaster Board and Stucco, C. L. 40,000#	6½¢
	Window Shades and Window Shade Cloth, A. Q.	19¢
	Wrappers, Paper, N. O. S., printed, C. L. 36,000#	8¢

790 *Testimony of Mr. Lee Howell, Evansville, Indiana.*

Extract from Stenographer's Minutes of I. C. C. Docket No. 6482, Before the Interstate Commerce Commission, Styled Bowling Green Business Men's Protective Association of Bowling Green, Ky., versus The Evansville & Bowling Green Packet Company, et al.

Heard in Bowling Green, Ky., March 2, 1914.

791 — of establishing and preserving a proper parity of rates from these other points as compared with the rates from Evansville, Evansville being used as the basis, and the rates between Evansville and Bowling Green and landings on Green and Barren Rivers being fixed absolutely by the Evansville & Bowling Green Pack- Company, without any control, influence. dictation or domination of any one of the rail carriers crossing Green and Barren Rivers, or serving that territory.

Mr. Welman: State if the Louisville & Nashville Railroad Company, or any railroad, has ever exercised, or sought to exercise, or now exercises, any influence or control whatever, over the Evansville

& Bowling Green Packet Company with respect to its adjustment of freight rates to and from Bowling Green, Kentucky, or other landings on Green and Barren Rivers reached by the railroads crossing same.

Mr. Howell: None whatever.

Mr. Welman: State if the Evansville & Bowling Green Packet Company has ever subjected its management or policies, or its rate adjustment, to the dictation or influence of the Louisville & Nashville Railroad Company, or any other railroad company, reaching points located on Green and Barren Rivers.

Mr. Howell: No.

Mr. Welman: State whether or not the Louisville & Nashville Railroad Company, or any other railroad company reaching points located on Green and Barren Rivers has ever, directly or indirectly, sought to restrain or control the Evansville & Bowling Green Packet Company in any manner whatsoever in the routing or diversion of any freight shipments destined to Bowling Green or other landings on said Green and Barren Rivers.

Mr. Howell: No. That subject has never been mentioned
792 even, to my knowledge.

Mr. Welman: State whether or not — your position as General Freight Agent of the St. Louis and Henderson Divisions of the Louisville & Nashville Railroad Company there has been any conflict of interest whatever in directing the affairs and establishment of rates and handling and routing of traffic on the part of the Evansville & Bowling Green Packet Company.

Mr. Howell: I have never considered that there was or has been any conflict of interest whatever in directing the affairs, establishment of rates and handling and routing of traffic on the part of the Evansville & Bowling Green Packet Company, with my position or duties as General Freight Agent of the St. Louis and Henderson Divisions of the Louisville & Nashville Railroad Company.

While it is true that both the Louisville & Nashville Railroad Company and the Evansville & Bowling Green Packet Company serve Livermore, South Carrollton and Bowling Green, a very large proportion of the traffic between these points and Evansville had always moved by river, and because, in connection with my associations, I interested myself in a line of steamboats on Green and Barren Rivers, no change was made in conditions that had previously existed, or that would have existed, had I not happened to be interested is the Evansville & Bowling Green Packet Company.

The Evansville & Bowling Green Packet Company has always maintained an agent at Evansville, and he has solicited traffic between Evansville and these landings without any restriction; and, besides, navigation on Green and Barren Rivers, from the Ohio River to Bowling Green and Mammoth Cave is open to the public and anybody that wants to put in a boat or a line of boats in that trade has every right to do so.

793 The Evansville & Bowling Green Packet Company does not own any franchise on Green or Barren Rivers, and since its organization has been subject to more or less competition by steam-

boats and by gasoline boats through from Evansville to Bowling Green and from Evansville to points on the power part of Green River, and between points on Green and Barren Rivers.

Of one thing I am sure, that in my capacity as General Freight Agent of the St. Louis and Henderson Divisions of the Louisville & Nashville Railroad Company, I have never, directly or indirectly, influenced or sought to influence any traffic away from the Packet line to the Louisville & Nashville Railroad Company, destined to points reached by the boat line, nor have any of my superior officers in the service of the Louisville & Nashville Railroad Company even suggested, much less directed, that I take any such action. My interest in the Evansville & Bowling Green Packet Company is a private investment, pure and simple, entirely free from any direction, influence or control of any other transportation line.

Mr. Welman: State whether or not the Louisville & Nashville Railroad Company has ever dictated or influenced, or attempted to dictate or influence, the diversion to that line from the river route of any freight shipments from any points, destined to Bowling Green or other landings on Green and Barren Rivers.

Mr. Howell: It never has.

Mr. Welman: State whether or not, by reason of your connection with the Louisville & Nashville Railroad Company, and your interest in the Evansville & Bowling Green Packet Company, any traffic routed or tendered for the boat line at Evansville, for Bowling Green, or for any other place, has been diverted from the
794 boat line to the Louisville & Nashville Railroad Company.

Mr. Howell: No, it has not.

Mr. Welman: State whether or not, by reason of your connection with the Louisville & Nashville Railroad Company, and your interest in the Evansville & Bowling Green Packet Company, the Louisville & Nashville Railroad Company does now, or has ever, dominated, controlled, directed or influenced, or attempted to dominate, control, direct or influence the Evansville & Bowling Green Packet Company in its rate adjustment, routing of freight, management, operation or policies, or in anything else connected with its business.

Mr. Howell: No, it has not.

Mr. Welman: State whether or not, by reason of your connection with the Louisville & Nashville Railroad Company, and your interest in the Evansville & Bowling Green Packet Company, the Evansville & Bowling Green Packet Company has ever submitted its business, management, policies, adjustment of freight rates or routing of freight, to the control, direction or influence of the Louisville & Nashville Railroad Company, or any other railroad company.

Mr. Howell: No, it never has done so.

Mr. Welman: State whether or not there is any conspiracy or understanding, actual or implied, between the Evansville & Bowling Green Packet Company and the Louisville & Nashville Railroad Company, or any other railroad company, by which the Evansville & Bowling Green Packet Company has refused, refuses, or will hereafter refuse, to participate in through bills of lading and in the

establishment of joint through rates, or in the handling of through shipments from any points beyond Evansville, through
795 Evansville by water, to Bowling Green and landings on Green and Barren Rivers, or in the reverse direction.

Mr. Howell: No, absolutely none. No such question has ever been mentioned.

Mr. Welman: State whether the Evansville & Bowling Green Packet Company has denied the shippers of Bowling Green rates, rights, privileges and service to which they are justly entitled, or has deprived them of the benefit of competition.

796 Answer of the Interstate Commerce Commission referred to in the foregoing Præcipe and filed in the United States Commerce Court on November 1st, 1912, is as follows:

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much of such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

This respondent, which, for convenience, will be referred to hereinafter as the Commission, admits that it made the report and orders referred to in paragraph 6 of the petition herein, and alleges that said orders were two in number, and that in response to a petition for rehearing filed in the office of the Commission as alleged in paragraph 18 of the petition the Commission, on October 8, 1912, vacated and set aside one of said orders and modified the other of said orders so as to read as follows:

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 8th Day of October, A. D. 1912.

797 Charles A. Prouty, Judson C. Clements, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthaser H. Meyer, Commissioners.

Fourth Section Order No. 1361.

In the Matter of That Portion of Application No. 1952, of the Louisville & Nashville Railroad Company, by A. R. Smith, Its Third Vice-President, for Itself and on Behalf of Its Connections, for Relief from the Provisions of the Fourth Section of the Act to Regulate Commerce, as Amended June 18, 1910, Respecting Class and Commodity Rates.

Class and Commodity Rates.

Upon further consideration -f the record in the above-entitled case:

It is ordered, That the order heretofore entered on June 4, 1912, in said case be, and the same is, hereby amended to read as follows:

This application, No. 1952, filed December 17, 1910, asks, among other things, for authority to continue to charge lower rates to and from Louisville, Ky., Clarksville, and Nashville, Tenn., than are concurrently in effect on like traffic to and from Bowling Green, Ky. A hearing having been held upon this application, in so far as it relates to rates on freight traffic to and from the points hereinbefore described, and full investigation of the matters and things involved therein having been had, and the Commission having, on the 4th day of June, 1912, made and filed a report containing its findings of fact and conclusions thereon, which said report is herein referred to and made a part hereof:

It is ordered, That that portion of said application No.

798 1952 which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby denied, effective December 1, 1912.

It is further ordered, That that portion of said application No. 1952 which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to continue to charge lower rates on sugar from New Orleans, La., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, provided that the present rates to Bowling Green are not exceeded.

The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any other provision of the act.

The Commission further alleges that said modified order of October 8 was duly served upon said petitioner, and was made in response to application No. 1952 referred to in paragraph 4 of said petition; that in said application the petitioner, among other things, requested the Commission to grant it relief from the operation of section 4 of the act to regulate commerce, on traffic transported by said petitioner through Bowling Green, Ky., to and from Nashville, Tenn., on oranges transported by said petitioner from Jacksonville, Fla., through said Bowling Green to Louisville, Ky., and on sugar transported by said petitioner from New Orleans, La., through said Bowling Green to said Louisville.

799 The Commission further alleges that prior to the making and serving of said order of October 8, as aforesaid, it made a full and complete investigation in the premises in accordance with the provisions of said section 4, as a result of which it found that to permit said petitioner to make a charge for transporting traffic to and from said Bowling Green greater than the charge contemporaneously exacted by said petitioner for transporting like traffic through Bowling Green to and from said Nashville would give to the latter point undue and unreasonable preference and advantage and subject said Bowling Green to undue and unreasonable prejudice and disadvantage, and further found that to permit said petitioner to make a charge for transporting oranges from Jacksonville, Fla., to said Bowling Green greater than the charge contemporaneously exacted by said petitioner for transporting oranges from said Jacksonville through said Bowling Green to Louisville, Ky., would give the latter point undue and unreasonable preference and advantage and subject said Bowling Green to undue and unreasonable prejudice and disadvantage, and further found that to permit said petitioner to make a charge for the transportation of sugar from New Orleans, La., to said Bowling Green greater than the charge contemporaneously exacted by said petitioner for transporting sugar from said New Orleans through said Bowling Green to Louisville, Ky., provided the present rates for such transportation to said Bowling Green were not exceeded, would neither give to said Louisville an undue or an unreasonable preference or advantage, nor subject said Bowling Green to an undue or an unreasonable prejudice or disadvantage.

The Commission further alleges that in said investigation a large volume of testimony and other evidence bearing upon the matters covered by said order of October 8 were submitted to the Commission for consideration on behalf of said petitioner by its counsel;

800 that during said investigation and subsequently, both orally and in briefs filed, all matters involved in said investigation, including the matters covered by the allegations contained in the petition herein, were fully argued, after which they were submitted to the Commission for determination, whereupon, the Commission

determined said matters and made a report which included the Commission's decision conclusions and order in the premises; that said report which is included in Exhibit E to the petition herein, was duly served upon said petitioner, and that said order, and the findings of the Commission hereinbefore mentioned, upon which said order was based, were and are, and each of them was and is, fully supported by the evidence submitted to the Commission in said investigation as aforesaid.

The Commission further alleges that in making said report and said order, it considered exhaustively and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance and condition called to its attention on behalf of said petitioner in said investigation, including all matters covered by the allegations contained in the petition herein.

The Commission further alleges that said order was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been fully conferred upon it, or exercise that authority in an unreasonable manner, and that said order is otherwise lawful and valid; and the Commission denies each of and all the allegations to the contrary contained in said petition. Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in said petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included
801 in said report, which is hereby referred to and made a part hereof.

All of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and thereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By P. J. FARRELL, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

Balthasar H. Meyer, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above named respondent, and makes this affidavit on behalf of said Commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

BALTHASAR H. MEYER.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 1st day of November, 1912.

[SEAL.] GEO. F. GRAHAM,
Notary Public.

802 Answer of the United States, referred to in the foregoing Præcipe and filed in the United States Commerce Court on November 5th., 1912, is as follows:

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

Comes now the United States, respondent, by its counsel, and, for answer to the petition filed against it in the above-entitled cause, says:

I.

It admits the filing of the complaint before the Interstate Commission, docket No. 4310, the answer thereto, the fourth section application, No. 1952 of the petitioner, the hearing before the commission, the report of the commission in the premises, the two orders entered in pursuance of the proceedings and the report, and the petition for a rehearing.

II.

Upon consideration of the petition for a rehearing, the Interstate Commission, on October 8, 1912, vacated and set aside one of the said orders and modified the other, so that the only order entered now standing, in pursuance of the proceedings and the report, is the following, viz:

Fourth Section Order No. 1361.

In the Matter of that Portion of Application No. 1952 of the Louisville & Nashville Railroad Company by A. R. Smith, Its Third Vice-President, for Itself and on Behalf of Its Connections for Relief from the Provisions of the Fourth Section of the Act to
803 Regulate Commerce, as Amended June 18, 1910, Respecting Class and Commodity Rates.

Class and Commodity Rates.

Upon further consideration of the record in the above-entitled case:

It is ordered, That the order heretofore entered on June 4, 1912, in said case be, and the same is, hereby amended to read as follows:

This application, No. 1952, filed December 17, 1910, asks, among other things, for authority to continue to charge lower rates to and from Louisville, Ky., Clarksville, and Nashville, Tenn., than are concurrently in effect on like traffic to and from Bowling Green, Ky. A hearing having been held upon this application, in so far as it relates to rates on freight traffic to and from the points hereinbefore described, and full investigation of the matters and things involved therein having been had, and the commission having, on the 4th day of June, 1912, made and filed a report containing its findings of fact and conclusions thereon, which said report is herein referred to and made a part hereof;

It is ordered, That that portion of said application No. 1952

which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

It is further ordered, that that portion of said application No. 1952 which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

804 It is further ordered, that the petitioners herein be, and they are hereby, authorized to continue to charge lower rates on sugar from New Orleans, La., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, provided that the present rates to Bowling Green are not exceeded.

The commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any other provision of the act, which said order was on October 8, 1912, duly served upon the petitioner.

III.

The said order, the report rendered in connection therewith, and relating thereto, and the findings of fact in said report and order contained, were made upon due investigation and after a full hearing and upon substantial and sufficient evidence, and due consideration thereof, and the commission did not, in any particular, act unreasonably, arbitrarily, or otherwise improperly.

IV.

The Interstate Commerce Commission in entering the said order did not violate the act to regulate commerce or any provision thereof; or violate any right of property of the petitioner protected by the act of regulate commerce or the Constitution of the United States.

V.

The matters and things heard and determined by the Interstate Commerce Commission were within its power and authority to hear and determine under the act to regulate commerce, and in its report in writing with respect thereto, which states its conclusion,

805 together with its decision, order, or requirement in the premises, the matters and things of which complaint is made were fully covered and foreclosed by findings of fact.

And now, having fully answered the petition, this respondent prays that said petition be dismissed at the petitioner's costs, and for such other and further orders as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

November, 1912.

806 Answer of the United States to the Supplemental Petition, referred to in the foregoing Præcipe and filed in the United States Commerce Court on November 20th, 1912, is as follows:

LOUISVILLE & NASHVILLE RAILROAD COMPANY
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Comes now the United States of America by its counsel, first reserving the right now and at any and all times hereafter to challenge the jurisdiction of the court to proceed in said cause on the ground that the order of the Interstate Commerce Commission sought to be set aside and annulled is a negative order, or upon other grounds, and for answer to the supplemental petition filed herein against it says:

I.

It adheres to and adopts the allegations contained in its answer to the petition herein and each and every part of the same, to the same extent and to all intents and purposes as if the same were set out at large herein.

II.

The order of the Interstate Commerce Commission sought to be set aside and annulled, the report rendered in connection therewith and relating thereto, and the findings of fact in said report and order contained, were made upon due investigation and after a full
807 hearing and upon substantial and sufficient evidence and due consideration thereof. The Interstate Commerce Commission did not, in any particular, act capriciously, unreasonably, arbitrarily, or otherwise improperly, and this respondent specifically denies each and every allegation in the said supplemental petition contained to the contrary.

III.

The Interstate Commerce Commission in entering the said order did not violate the act to regulate commerce, or any provision thereof; or violate any right of property of the petitioner protected by the act to regulate commerce or the Constitution of the United States.

The matters and things heard and determined by the Interstate Commerce Commission were within its power and authority to hear and determine under the act to regulate commerce, and in its report in writing with respect thereto, which states its conclusion, together with its decision, order, or requirement in the premises, the matters and things of which complaint is made were fully covered and foreclosed by findings of fact.

And now, having fully answered the said supplemental petition, this respondent prays that the same be dismissed at the cost of the

petitioner, and for such other and further order as may be appropriate in the premises.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

808 *Bond on Appeal.*

Filed January 17th, 1916.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Plaintiff,
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Respondents.

Bond on Appeal.

Know all men by these presents, that we, the Louisville & Nashville Railroad Company, as principal, and National Surety Company, a corporation of the State of New York, as surety, are held and firmly bound unto the above named United States of America and the Interstate Commerce Commission, in the full sum of Two hundred dollars ($200.00), to be paid to the said United States of America and the Interstate Commerce Commission, their successors or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this 17th day of January, in the year of our Lord one thousand nine hundred and sixteen.

Whereas, the above named Louisville and Nashville Railroad Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the District Court of the United States for the Western District of Kentucky on the third day of July, 1915.

Now, therefore, the condition of this obligation is such, that if the above named Louisville and Nashville Railroad Company shall prosecute its said appeal to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void;
809 otherwise, the same shall be and remain in full force and virtue.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By W. A. COLSTON, *Attorney.*
NATIONAL SURETY COMPANY,
By J. MORTON MORRIS, *Attorney-in-Fact.*

Approved January 17th, 1916.
WALTER EVANS, *Judge.*

810 *Clerk's Certificate.*

I, A. G. Ronald, Clerk of the District Court of the United States for the Western District of Kentucky, at Louisville, do hereby certify that the foregoing 809 pages contain a true and correct transcript of the record and proceedings in the case of Louisville & Nashville Railroad Company vs. United States of America and Interstate Commerce Commission, No. 18 in Equity, copied in accordance with the Praecipe of the Appellant to be found on pages 40, 41 & 42 of this record, as the same appears from the originals thereof now on file and of record in my said office.

Witness my hand and the seal of said Court this 21st day of January, A. D., 1916.

[Seal District Court of the United States, Wes. Dist. Ky.]

A. G. RONALD, *Clerk.*

[Canceled 10-cent Internal Revenue Stamp.]

Endorsed on cover: File No. 25,106. W. Kentucky D. C. U. S. Term No. 823. Louisville & Nashville Railroad Company, appellant, vs. The United States of America and Interstate Commerce Commission. Filed January 26th, 1916. File No. 25,106.

Office Supreme Court, U. S.
FILED
OCT 10 1917
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 91.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - - - - - - - Appellant,

versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, - - - - - - - - - Appellees.

Appeal from the District Court of the United States for the Western District of Kentucky.

BRIEF FOR APPELLANT.

HENRY L. STONE,
WM. A. COLSTON,
Solicitors for Petitioner.

WM. A. NORTHCUTT,
NELSON W. PROCTOR,
WM. BURGER,
Of Counsel.

Louisville, Ky., October 6, 1917.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

SUBJECT INDEX.

PAGE

STATEMENT OF THE CASE 1

Preliminary statement—Court proceedings 1

Questions involved and how raised 3

Geographical situation of Louisville, Ky., Nashville, Tenn., and Bowling Green, Ky., and the effect of competition thereat 4

Exhibits showing graphically the effect of competition at Louisville, Bowling Green and Nashville 10

The Fourth Section application of the Louisville & Nashville Railroad Company 11

Complaint of the Bowling Green Business Men's Protective Association before the Interstate Commerce Commission 12

Hearings before the Interstate Commerce Commission 15

The purpose and scope of the Fourth Section hearing involved in this case 16

Assignment of errors and particulars in which the decree of the District Court is alleged to be erroneous 20

PAGE

SPECIFICATION OF ERRORS 29

I.

The lower court erred in dismissing the action and in not granting the relief prayed for by appellant, because the order complained of is not such a negative order or order of denial as is contemplated by the Fourth Section of the Act to Regulate Commerce, and the Commission was without power to make the order either under that section or under any other law 29

II.

The lower court erred in dismissing the action and in not granting the relief prayed for by appellant, because the order is void because it is contrary to the indisputable nature of the evidence and is not supported by any evidence and is arbitrary, and the Commission erred as a matter of law in making the order upon the evidence before it 29

POINTS 30

I.

The order complained of is not such a negative order or order of denial as is contemplated by the Fourth Section of the Act to Regulate Commerce, and the Commission was without power to make the order either under that section or under any other law 30

PAGE

II.

Even if the order complained of is a negative order or an order of denial, such as is contemplated by the Fourth Section of the Act to Regulate Commerce, the order is void because it is contrary to the indisputable nature of the evidence and is not supported by any evidence and is arbitrary, and the Commission erred as matter of law in making the order upon the evidence before it 30

ARGUMENT 34

I.

The order complained of is not such a negative order or order of denial as is contemplated by the Fourth Section of the Act to Regulate Commerce and the Commission was without power to make the order either under that section or under any other law 34

(a) The order is not a negative order 34

(b) The order is not responsive to appellant's Fourth Section Application No. 1952, but is responsive to the complaint of discrimination under the Third Section of the Act in Docket No. 4310 37

(c) The effect of the order complained of is to require the reasonable rates to and from Bowling Green to be reduced and to increase the violation of the literal provisions of the long and short-haul clause, and these things the Commission is without power to effect 38

PAGE

(d) The Commission's order is broader than the Fourth Section hearings held in connection therewith, and hence deprives appellant of its property without due process of law... 39

II.

Even if the order complained of is a negative order or an order of denial such as is contemplated by the Fourth Section of the Act to Regulate Commerce, the order is void because it is contrary to the indisputable nature of the evidence and is not supported by any evidence and is arbitrary, and the Commission erred as a matter of law in making the order upon the evidence before it..... 40

(a) The uncontroverted facts of record show that the difference in the circumstances and conditions affecting the transportation of property to, from and through Louisville, Ky., and Nashville, Tenn., as compared with the circumstances and conditions affecting the transportation of property to and from Bowling Green, Ky., are such as to justify discrimination either under the Third Section or under the Fourth Section of the Act to Regulate Commerce..... 40

(b) The power of the Commission to pass upon applications for relief filed under the Fourth Section of the Act to Regulate Commerce as amended, is subject to the right of the carriers to meet competition and to charge reasonable rates, and is limited by

PAGE

the settled construction of the Act by this Court, and particularly by the construction of the First, Third, and Fourth Sections of the Act 42

(c) The rates to and from Bowling Green are not and are not shown to be unjust or unreasonable in and of themselves or otherwise in violation of Section One of the Act to Regulate Commerce, and the Commission, in denying relief in respect to the Nashville rates, notwithstanding the intermediate Bowling Green rates are just and reasonable in and of themselves, exceeded the limitations fixed by law on the exercise of its powers under the Fourth Section.... 49

(d) The acceptance of lower rates to and from Nashville than the rates in effect to and from intermediate points by the Louisville & Nashville Railroad was not and is not voluntary, but is the necessary result of actual compelling competition at Nashville.. 50

(e) The Third Section of the Act to Regulate Commerce prohibits only such preferences as are unjust or unreasonable, and as a general rule those facts and matters which carriers, apart from any question arising under the Act, would treat as calling, in a given case, for a preference or advantage, are facts and matters which the Commission should consider in forming its judgment whether such preference or advantage is undue or unreasonable within the meaning of the Act..... 51

PAGE

(f) It having been established, as it was in the case at bar, that lower rates to one point, such as Nashville, than are in effect to another, are due to competition which is real, substantial and compelling, then the preference so arising or produced can not be held in legal effect to be an undue or unjust prejudice under either the Third or Fourth Sections of the Act to Regulate Commerce, and the Commission's conclusion that Nashville was given an undue preference and Bowling Green subjected to an unjust disadvantage was not warranted or sustained by any evidence and the Commission erred as a matter of law in this regard.... 58

(g) The Commission's findings with respect to the force and effect of railroad competition at Nashville are contrary to the indisputable nature of the evidence..... 61

(h) The order complained of places upon appellant the burden of either inducing other railroads at Nashville to advance their rates to and from Nashville or of reducing its own reasonable Bowling Green rates, and in this respect is unjust, unlawful and oppressive..... 67

(i) Neither the common law nor the Act to Regulate Commerce requires equality of charge, except where the services are similar..... 69

(j) The uncontradicted testimony shows that water competition at Nashville was in the past and still is actual, active, and control-

PAGE

ling upon the adjustment of rates to, from and through that point, and the Commission finds and reports this to be a fact.... 70

(k) The Commission's finding, with respect to water competition at Bowling Green, is not supported by any evidence..... 73

(l) The Commission's findings, with respect to an alleged community of interest and control between the boat line and the railroad at Bowling Green, are not sustained by any evidence 73

(m) Even if a control or community of interest between appellant and the Packet Company at Bowling Green did exist, such fact would not operate to render the acceptance by appellant of lower rates to Nashville than to Bowling Green, in order to meet competition at Nashville, an undue or unlawful preference to Nashville in violation of either the Third or the Fourth Sections of the Act to Regulate Commerce, and the Commission erred as a matter of law in holding that it does..... 87

(n) The denial of relief in respect to rates on oranges from Jacksonville to Louisville was likewise unlawful and should be corrected 87

(o) The Order of the Commission is based exclusively upon the theory of estoppel, which theory the Commission is without power to consider or enforce..... 88

LIST OF CASES.

PAGE

A. T. & S. F. R'y Co. v. U. S., 191 Fed. 856..... 48
Commercial Club of Omaha v. C. & N. W. R'y Co., 7 I. C. R. 404..... 52
16 Cyc., p. 1082..... 84
17 Cyc., p. 817.....83, 84
E. T. V. & G. R. R. Co. v. I. C. C., 181 U. S. 1, 12...43, 51, 60, 66, 71, 72
Ex parte Koehler, 31 Fed. 315, 319.....55, 70
Frazier v. Ga. R. R. Co., 108 Ga. 807, 33 S. E. 996.... 83
Intermountain Rate Cases, 234 U. S. 476, 483, 485, 44, 48
I. C. C. v. Ala. Midland R'y Co., 168 U. S. 144, 175, 43, 58, 59, 60, 69
I. C. C. v. Ala. Midland R'y Co., 69 Fed. 231, 232...52, 54
I. C. C. v. A. T. & S. F. R'y Co., 50 Fed. 295, 304.... 55
I. C. C. v. B. & O. R. R. Co., 145 U. S. 276, 277...52, 59, 69
I. C. C. v. C. G. W. R'y Co., 209 U. S. 108, 119, 120, 49, 60, 86
I. C. C. v. C. N. O. & T. P. R'y Co., 56 Fed. 925, 926, 934, 935..... 55
I. C. C. v. Detroit, etc., R. Co., 167 U. S. 633, 644.... 58
I. C. C. v. W. & A. R'y, 93 Fed. 84..... 69
I. C. C. v. L. & N., 227 U. S. 88.....25, 27
I. C. C. v. L. & N. R. R. Co., 190 U. S. 273, 284....43, 58, 60, 69
L. & N. R. R. Co. v. Behlmer, 175 U. S. 648, 654..43, 47, 60
L. & N. R. R. Co. v. I. C. C., 195 Fed. 541..... 49

PAGE

L. & N. v. U. S., 207 Fed. 591..... 3
L. & N. R. R. Co. v. Kentucky, 161 U. S. 677, 678.... 85
M. & St. L. R'y Co. v. Minnesota, 186 U. S. 267..... 44
Northern Securities Co. v. U. S., 193 U. S. 197..... 45
Roller v. Holly, 176 U. S. 398-409..... 42
Southern Pacific Co. v. I. C. C., 219 U. S. 433, 443.... 87
T. & P. R'y Co. v. I. C. C., 162 U. S. 197, 239.....43, 53, 59, 60, 69
U. S. v. Joint Freight Traffic Ass'n, 171 U. S. 505... 45
U. S. v. Trans-Missouri Freight Ass'n, 166 U. S. 200. 45
Wight v. United States, 167 U. S. 512, 518..... 58

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 91.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - *Appellant,*

versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, - - - - - *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

Preliminary Statement—Court Proceedings.

This is an appeal from a decree (5)* of the District Court of the United States for the Western District of Kentucky, in the case of Louisville & Nashville Railroad Company versus the United States of America and the Interstate Commerce Commission (225 Fed. 571), dismissing an action, in which the appellant sought to enjoin, set aside and annul parts of an amended order of the

* Where not otherwise indicated in the brief numbers in parenthesis show printed pages of the transcript of record.

Interstate Commerce Commission made on October 8, 1912, and known as Fourth Section Order No. 1361 (167-168).

The substantive parts of the order specifically complained of are as follows—to-wit (170):

> "IT IS ORDERED, That that portion of said Application No. 1952, which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be and the same is hereby denied, effective December 1, 1912.
>
> "IT IS FURTHER ORDERED, That that portion of said Application No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be and the same is hereby denied, effective December 1, 1912."

The order of October 8, 1912, complained of, is the result of an amendment (merely postponing the effective date) of a Fourth Section Order bearing the same number made by the Commission on June 4, 1912.

On June 4, 1912, and in connection with its Fourth Section Order No. 1361, as originally entered, the Commission had made an affirmative order (147-149) in Docket No. 4310, before it upon complaint of the Bowling Green Business Men's Protective Association of Bowling Green, Ky. This affirmative order was vacated and set aside by the Commission on October 8, 1912 (165), the same date on which it entered the amended Fourth Sec-

tion Order No. 1361, herein complained of, and one day after appellant had filed its petition herein (95-161)—in the United States Commerce Court—attacking both the affirmative order and the so-called negative Fourth Section Order No. 1361.

The affirmative order in Docket No. 4310, which was vacated and set aside by the Commission has never been restored, but as to the matters now complained of (169), the amended Fourth Section Order No. 1361, requires the performance of all those acts and things which were required by the vacated affirmative order, and appellant accordingly filed its supplemental petition herein (161-177) attacking the so-called negative Fourth Section Order No. 1361, as amended.

The Commerce Court (207 Fed. 591) dismissed the action because it was of the opinion that it was without jurisdiction in the case of the negative Fourth Section Order, but upon appeal to this court (No. 280, October Term, 1914), the Solicitor General confessed error, the decree of the Commerce Court was reversed, and the existence of the Commerce Court having been terminated, the case was sent for trial to the District Court of the United States for the Western District of Kentucky.

Questions Involved and How Raised.

This case involves the validity of an order of the Interstate Commerce Commission made under the Fourth Section of the Act to Regulate Commerce, which order fixes the relation or measure of certain freight rates on traffic

moving via the Louisville & Nashville Railroad through Bowling Green, Ky., to, from and through Nashville, Tenn., and Louisville, Ky., as compared with the rates to and from Bowling Green, Ky., itself.

A discussion of the rates to and from Nashville as compared with the rates to and from Bowling Green will be illustrative of the entire situation.

GEOGRAPHICAL SITUATION OF LOUISVILLE, KY., NASHVILLE, TENN., AND BOWLING GREEN, KY., AND THE EFFECT OF COMPETITION THEREAT.

The geographical situation of Louisville, Ky., Nashville, Tenn., and Bowling Green, Ky., is shown by a small map, marked Exhibit A, opposite printed page 110 of the record.

This map illustrated not only the effect of water competition, but also (by straight lines) the effect of carrier competition.

A map on a larger scale, representing the territory more immediately involved, is presented as Exhibit No. 1 in the appendix to this brief.

Immediate water competition is afforded at Louisville, Ky., by the Ohio River; at Nashville, Tenn., by the Cumberland River; and at Bowling Green, Ky., by slack water navigation of the Green and Barren rivers.

The Ohio River upon which Louisville, Ky., is situated is navigable for its entire length.

The Cumberland River is navigable from its mouth to Burnside, Ky. Nashville, Tenn., is situated about midway between the mouth of the river—where it empties

into the Ohio River above Paducah, Ky.—and the head of navigation at Burnside, Ky.

The Barren River, upon which Bowling Green, Ky., is situated, empties into the Green River, which in turn empties into the Ohio River near Evansville, Ind. The Green and Barren rivers afford slack water navigation from the mouth of Green River to Mammoth Cave, Ky., on the Green River, and to Bowling Green, Ky., on the Barren River.

As illustrated by the map marked Exhibit A, opposite printed page 110 of the record, railroad competition between Chicago, Ill., Toledo and Cleveland, Ohio, and Eastern Cities, and related points, on the one hand, and Nashville, Tenn., on the other hand, is afforded by east and west lines, running from Eastern Cities, and north and south lines, running from northern points, to the Ohio River crossings, Cincinnati, Louisville, Evansville, etc., in connection with the following competing lines of railroad:

Louisville & Nashville Railroad
Queen & Cresent System
Southern Railway
Tennessee Central Railroad
Illinois Central Railroad
and the
Nashville, Chattanooga & St. Louis Railway,

which roads compete with each other and with all rail and rail and water lines running from the northwest to the southeast and from Eastern Cities and related territory, or via the various South Atlantic ports to connections

with the Nashville, Chattanooga & St. Louis Railway, the Queen and Crescent Road, and the Tennessee Central Railroad at Chattanooga and Emory Gap. There is no railroad competition at Bowling Green, Ky.

The nature and measures of the railroad and water competition at Louisville, Ky., Nashville, Tenn., and Bowling Green, Ky., respectively, and the historical, commercial and geographical reasons therefor are fully set out in the testimony of record given by the following witnesses before the Interstate Commerce Commission in the hearings herein:

D. M. Goodwyn (315-345, 348, 353-357, map opposite page 454, 506-519, 581-593, 596-600).

Charles E. Fulton (305).

E. K. Bryan, Jr. (520).

As well as in the testimony of Mr. A. R. Smith before the Commerce Court (604-615), which was not before the Commission.

Limiting the discussion for the sake of simplicity to a comparison between Nashville and Bowling Green, the testimony of the witnesses before the Commission, referred to, shows conclusively—

> (1) That water competition at Nashville was and still is actual, active and controlling upon the rates to, from and through that point—and the Commission (137) finds and reports this to be a fact. (The Commission in its report in this case said—"there appears to be no doubt that the water competition of the Cumberland River has a controlling influence on the Nashville and Clarksville rates.")

(2) That there is at Nashville actual, active and controlling railroad competition or competition of carrier with carrier, intensified by market competition, and there is no such competition at Bowling Green. (A glance at the map, Exhibit A, opposite page 110 of the record, in connection with the testimony given by the above-mentioned witnesses before the Interstate Commerce Commission shows that the competition at Nashville is in truth, as it was described by Mr. Charles E. Fulton (305) "north, south, east and west, criss-cross and every way you can make it." And it may well be understood why the Commission's Examiner himself stated (520) there could not be, in his opinion, any question as to such competition.)

(3) That the rates to Bowling Green and other intermediate points between Louisville & Nashville are reasonable in and of themselves, and the Nashville rates are no lower than it is necessary that they should be in order to meet the competition existing at that point.

(4) That the rates to and from Bowling Green fully meet the competition existing at that point—*e. g.* (339, 355 and 514) 80 per cent of the inbound traffic is handled by railroad and 20 per cent by river, and 95 per cent of the business out of Bowling Green is handled by the Louisville & Nashville Railroad and 5 per cent by river, and the rail rates and competition of the L. & N. at Bowling Green are sufficient (332) to make the boat rates from Evansville to Bowling Green lower than the boat rates to intermediate landings.

These facts are established by uncontradicted evidence of record before the Commission, and are uncontroverted in any way, but the Commission in its report (137-142), holds in substance that appellant is *estopped from setting*

up these facts in support of its application for relief from the provisions of the long and short-haul clause, because of

(a) an alleged community of interest between the water and the rail carriers at Bowling Green, and

(b) the ownership by appellant of 71 per cent of the stock of the Nashville, Chattanoga & St. Louis Railway, which enters Nashville, although it is not even claimed that appellant controls in any way the Tennessee Central, the other competing carrier at Nashville.

The Commission says in its report (140-141):

"The defendants' argument that it fairly meets the competition which exists at Bowling Green loses its force when we consider that such competition is purely artificial, and that defendants' own action has removed the elements of real competition which presumably would otherwise exist. We believe the record reveals a community of interest between the water and rail carriers, the effect of which is to deprive Bowling Green of the benefit of water competition which it should enjoy under normal and natural conditions, and that under a situation such as this the rail carrier is estopped from justifying its discrimination against Bowling Green and in favor of Nashville and Clarksville on the ground that its rates to and from all three points properly reflect the water competition existing at them."

And (141-142):

"Except for the Nashville, Chattanooga & St. Louis Railway at Nashville, no rail carriers other than the Tennessee Central and the Louisville & Nashville reach Clarksville and Nashville. The General Freight Agent of the Louisville & Nashville Railroad

Company asserted that 'we have no stronger competition, if as strong, as the Nashville, Chattanooga & St. Louis Railway,' but it is a fact that for many years the Louisville & Nashville Railroad has owned the majority of the stock of the Nashville, Chattanooga & St. Louis Railway. According to the report made by the Louisville & Nashville Railroad to the Commission for the year 1911, the stock so owned amounted to 71 per cent. In Chamber of Commerce of Chattanooga v. S. R'y Co., *supra,* the Commission said the Louisville & Nashville Railroad, by virtue of its ownership of a majority of the stock of the Nashville, Chattanooga & St. Louis Railway can name the entire Board of Directors and has the power to control the operations of the latter road. If competition of the Nashville, Chattanooga & St. Louis Railroad Company on traffic from the East to Nashville should, for any reason, become objectionable to the Louisville & Nashville Road, it possesses the power to control or put an end to that competition."

Beyond these alleged matters of *estoppel,* the Commission *does not find,* and there was *no evidence* before it showing a scintilla in contravention of the facts exhibited by appellant as above set forth in support of its application for relief. And we, accordingly say, that the Commission unlawfully attempted in its order to determine questions of estoppel, which it has no power to determine, that its order was contrary to the indisputable nature of the evidence; and that the Commission was and is, therefore, without power to make the order.

Exhibits Showing Graphically the Effect of Competition at Louisville, Bowling Green and Nashville.

The effect of competition on the rates at Louisville, Bowling Green and Nashville is graphically set forth in Exhibits 2 to 13, inclusive (581-593), which were introduced in the Fourth Section hearing before the Interstate Commerce Commission in this case, at the request of the Commission's Examiner, by Mr. D. M. Goodwyn, appellant's General Freight Agent, and Mr. Goodwyn's explanation of these exhibits appears at printed pages 596 to 600, inclusive, of the record.

Rates on the Louisville & Nashville Railroad System, when not affected by competition or other compelling forces, are based generally upon a mileage scale, known as Table A, a copy of which is shown as Exhibit No. 5.

Departures from Table A are effected either by reducing the class rates provided by the table or by publishing commodity rates which differ from the class rates prescribed.

Taking the rates on the first six classes, as prescribed in Table A, as normal or 100 per cent rates, the effect of competition on the class rates southbound from Louisville, Ky., to Nashville, Tenn., is shown graphically by the chart, Exhibit No. 7, which is based upon the rates set forth in Exhibit No. 6.

At Elizabethtown, Ky., 42 miles south of Louisville, competition with the Illinois Central has forced class rates somewhat below the normal of Table A rates, and the subnormal rates to Tunnel Hill, Glendale, and Upton

represent the effect of competition of adjacent stations on the Illinois Central or "cross-country competition."

At Nashville, Tenn., the rates are forced to a very low level by rail and water competition and the effect of this reduction is carried back by combination on Nashville in connection with some competition afforded by the Green and Barren rivers at Bowling Green, to Smiths Grove, 100 miles from Louisville. Exhibit 6 shows that the rates from Louisville to Smiths Grove, 100 miles, are the maximum class rates from Louisville to Nashville, inclusive.

The chart, Exhibit No. 9, illustrates graphically the relation of rates in the same direction for certain commodities. This chart is based on the rates shown in Exhibit No. 8, and exhibits *the greater relative effect which the competition of the Green and Barren rivers at Bowling Green has on certain commodities which may be carried by the boats than it has on rates on general classes which are not carried by the boats.*

Charts marked Exhibit No. 11 (based on exhibit marked No. 10), and Exhibit No. 13 (based on Exhibit No. 12), show similarly the effect of competition on the northbound rates on classes and on certain commodities separately.

THE FOURTH SECTION APPLICATION OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

By Fourth Section Application No. 1952, filed with the Interstate Commerce Commission, on December 17, 1910, pursuant to the amendment of June 18, 1910, to Section 4

of the Act to Regulate Commerce, appellant for itself and its connections sought authority, among other things, to continue lower rates on traffic through Louisville, Ky., to and from Clarksville and Nashville, Tenn., than are charged on like traffic to and from intermediate stations between Louisville, Ky., Clarksville and Nashville, Tenn., and also sought authority to continue lower rates on traffic through Nashville and Clarksville, Tenn., to and from Louisville, Ky., than are concurrently effective on like traffic to and from intermediate stations between Clarksville and Nashville, Tenn., and Louisville, Ky., and in that application appellant set forth the reasons which justified the relief prayed for.

A copy of said application, which embraces many other points than those above indicated, appears in the record at printed pages 27 to 94, inclusive.

COMPLAINT OF THE BOWLING GREEN BUSINESS MEN'S PROTECTIVE ASSOCIATION BEFORE THE INTERSTATE COMMERCE COMMISSION.

But the particular proceedings before the Interstate Commerce Commission which resulted in the order now complained of, were not initiated by appellant's Fourth Section Application, referred to, but were instituted by a complaint filed on August 18, 1911, by the Bowling Green Business Men's Protective Association of Bowling Green, Ky., against the appellant and other railroads named therein in a case known as Docket No. 4310, before the Commission, which complaint is set forth in the record at printed pages 112 to 124, inclusive.

This complaint of the Bowling Green Business Men's Protective Association was filed and heard (499-502) before any hearing had been had with respect to that part of appellant's Fourth Section Application No. 1952, which relates to the territory and stations here involved. [Although it does not appear to be material, the lower court erred in its opinion (6) that an investigation into this feature of its Fourth Section Application was in progress when the complaint of the Bowling Green Business Men's Protective Association was filed.]

The complaint of the Bowling Green Business Men's Protective Association attacked the rates in effect for the transportation of freight to and from Bowling Green, Ky., as compared with rates in effect to and from Clarksville and Nashville, Tenn., Louisville, Ky., and Evansville, Ind., from and to New York, Chicago, New Orleans, Jacksonville, St. Louis, and various other points.

The rates to and from Bowling Green, complained of by the Bowling Green Business Men's Protective Association, were alleged to be in violation of Sections 1, 3 and 4 of the Act to Regulate Commerce, in the following respects (123):

> (a) In that they were unjust and unreasonable and consequently in violation of Section 1 of the Act to Regulate Commerce;
>
> (b) In that they were unduly prejudicial to the interests of the City of Bowling Green and unduly preferential to the interests of Clarksville and Nashville, Tenn., and Louisville, Ky., and, therefore, in

violation of Section 3 of the Act to Regulate Commerce;

(c) In that they constituted in a majority of instances greater charges for the shorter distance to or from Bowling Green, Ky., than for the longer distances to or from the cities of Clarksville and Nashville, Tennessee, and Louisville, Ky.; such shorter distances being included within the longer distances and being over the same line and in the same direction, and that said greater charges to or from Bowling Green were in violation of Section 4 of the Act to Regulate Commerce, as amended June 18, 1910;

(d) And it was further alleged in said complaint that the circumstances and conditions surrounding the transportation of traffic to and from the City of Bowling Green, Ky., were substantially similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville and Nashville, Tenn., and Louisville, Ky.

Appellant answered before the Commission (124-130) and put in issue all of the material allegations of said complaint and with respect to the allegation concerning the alleged violation of Section 4 of the Act to Regulate Commerce, appellant set forth that (130) all of its rates to and from Bowling Green were embraced in the list of tariffs as to which it had previously filed an application with the Interstate Commerce Commission for relief from the provisions of the Fourth Section of the Act to Regulate Commerce, as amended June 18, 1910, and appellant in said answer specifically denied (130) that the circum-

stances and conditions surrounding the transportation of traffic to and from the city of Bowling Green, Ky., were substantially or at all similar to the circumstances and conditions surrounding the transportation of traffic to and from the cities of Clarksville or Nashville, Tenn., or Louisville, Ky.

HEARINGS BEFORE THE INTERSTATE COMMERCE COMMISSION.

A hearing was had at Bowling Green, Ky., on November 27 and 28, 1911, in the proceeding instituted by the complaint of the Bowling Green Business Men's Protective Association of Bowling Green, Ky., which was known as Docket No. 4310, before the Interstate Commerce Commission. A transcript of this hearing appears in the record at printed pages 177 to 495, inclusive.

And thereafter, to-wit, on April 29, 1912, upon order of the Commission a hearing was had at Bowling Green, Ky., with respect to—

> "that portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company, which seeks authority to continue lower rates on traffic through Louisville, Ky., to Clarksville and Nashville, Tenn., than are charged on like traffic to and from intermediate stations between Louisville, Ky., Clarksville and Nashville, Tenn.; also that portion of the same application which seeks to continue lower rates on traffic through Nashville and Clarksville, Tenn., to and from Louisville, Ky., than are concurrently effective on like traffic to and from intermediate stations between Clarksville and Nashville, Tenn., and Louisville, Ky."

The transcript of this latter hearing upon a portion of appellant's Fourth Section Application No. 1952 appears in the record at printed pages 496 to 600, inclusive.

THE PURPOSE AND SCOPE OF THE FOURTH SECTION HEARING INVOLVED IN THIS CASE.

The scope of the Fourth Section Hearing held at Bowling Green, Ky., on April 29, 1912, was clearly indicated in the order of the Commission, from which we have quoted above, and the object of that hearing was plainly stated by the Commission's Examiner who said (500):

> "I do not understand that this hearing is for the purpose of opening up the Bowling Green case. Now, as I understand it, the application of the carriers was not set down for hearing at the time the Bowling Green case was heard, and, therefore, I do not believe that the Commission can make an order affecting any rates on the Fourth Section until they have passed upon the application protecting those rates, and that the object of this hearing is to give the carriers an opportunity to make such a defense as they may desire of the present adjustment of rates before the Commission passes upon your case, and in setting this case down, *it not only affects Bowling Green, but all of the intermediate points by way of Louisville, Clarksville and Nashville, and it is in defense of those intermediate rates, as well as the Bowling Green rates that the carriers are here today.*"

And again Examiner Gaddess said (502):

> "Well, as I understand it Mr. Thomas, the Fourth Section feature was gone into in the Bowling Green case very fully. I had nothing to do with that hearing, but from what I have had to do or been able to

> gather from the record in the little opportunity I have had to examine it, I have come to the conclusion that the reasonableness of the rate was not only gone into, but the competitive conditions existing both at Bowling Green and Louisville and Clarksville and Nashville were also gone into, and I don't see that there is very much further that can be said as to Bowling Green, *but there are other points that are intermediate, and it is as much for those other intermediate points that this hearing is held as Bowling Green,* but the Commission wants before it all of the evidence and all of the facts that will assist it in reaching a conclusion *not only as to your case, but as to the Fourth Section Application which protects the railroads in their present adjustment of continuing lower rates to the more distant points than to the intermediate points.*"

That the lower court was not only confused, with reference to the order in which the hearings were had (6), as we have hereinabove indicated, but also misunderstood the purpose and scope of the Fourth Section hearing is apparent from the statement in its opinion (11), that

> "by its Application No. 1952, so far as now under consideration, the plaintiff attempted to present 'a special case' in which it should, in respect to *Bowling Green, Ky.,* be authorized by the Commission under Section 4 of the Act to charge less for a longer than for a shorter distance for the transportation of property."

The special case in appellant's Fourth Section Application, set down by the Commission for hearing on April 29, 1912, and the special case presented by appellant at that time was not as understood by the lower court "in respect to *Bowling Green, Ky.,*" but was in

respect to *Louisville, Ky., and Clarksville and Nashville, Tenn.* And the determination of the special case presented by appellant and heard by the Commission required not only a *hearing* with respect to other intermediate points as well as with respect to the *intermediate point, Bowling Green, Ky.*, but also a *decision* with respect to those other intermediate points, as well as with respect to the *intermediate point, Bowling Green, Ky.*

It is true that appellant's Fourth Section Application No. 1952 does contain a prayer, with respect to the special case of Bowling Green, Ky., but that special case involves Bowling Green, Ky., as a *longer distance point* and not as an *intermediate point*, as it is here involved, and that is not the special case herein heard or determined. That special case has never been heard or determined by the Commission and under appellant's undetermined Fourth Section Application No. 1952, with respect to the special case of Bowling Green, Ky., appellant may still charge, and does charge, lower rates to the longer distance point, Bowling Green, Ky., than it charges to intermediate points.

We insist that the order complained of, while under the name and in the form of a Fourth Section Order, ostensibly made pursuant to appellant's Fourth Section Application No. 1952, with respect to the special case set down for hearing on April 29, 1912, is in fact not at all responsive to that special case nor to any other portion of appellant's Fourth Section Application, but is directly responsive to the issue of unjust preference under the Third Section of the Act to Regulate Commerce, which

arose from the complaint of the Bowling Green Business Men's Protective Association in Docket No. 4310, in direct connection with which docket number or the order complained of was issued, and even if otherwise correct, the order should have been enjoined by the lower court, because an affirmative order of the Commission under Section 3 of the Act to Regulate Commerce would have expired by limitation of law after two years, or on December 1, 1914.

We also insist that the order, made with respect to all traffic *through Bowling Green,* is broader than the hearing, which was with respect to traffic *through Louisville.* Some of the particulars in which the order complained of exceeds as a matter of substantial importance the scope of the hearing had are pointed out in appellant's supplemental petition before the Commerce Court (174-175), and in the testimony given in the Commerce Court by Mr. A. R. Smith, appellant's Third Vice President (611-613). A number of the points mentioned by Mr. Smith, Louisville, Lebanon Junction, Bowling Green, Knoxville, etc., are shown on the map, Exhibit No. 1, in the appendix hereto and will assist in an understanding of the explanation.

It is, by reason of the competition hereinabove explained, impossible to increase the Nashville rates, therefore, the order of the Commission requires a reduction of the Bowling Green rates, with the result that the necessary effect of the order in respect to the special case of Bowling Green versus intermediate points is to increase the discrimination at Bowling Green under the Fourth

Section of the Act to Regulate Commerce, and this, we insist, the Commission is without power to do.

And again, we insist that, inasmuch as the order does not purport to either grant or deny appellant's application for relief from the long and short haul clause, it is not such a negative order of denial nor such an affirmative order of permission as is contemplated by the Fourth Section of the Act to Regulate Commerce. Neither does the order complained of prescribe the extent to which appellant may be relieved from the operation of the Fourth Section, and, therefore, we contend that the order is not such an order at all as the Commission has authority to make under the Fourth Section of the Act to Regulate Commerce, and as that is the only section under which it could issue such an order if at all, the Commission had, and has, no power at all to issue the order complained of.

ASSIGNMENT OF ERRORS AND PARTICULARS IN WHICH THE DECREE OF THE DISTRICT COURT IS ALLEGED TO BE ERRONEOUS.

The assignment of errors is set out in the record at printed pages 21 to 24, inclusive, and covers not only that phase of the order complained of which relates to the Bowling Green rates as compared with the Nashville rates, to which phase, for the sake of simplicity, we have limited our consideration above, but also that phase of the order which relates to the rates on oranges from Jacksonville to Louisville, as compared with the rates on oranges from Jacksonville to Bowling Green.

The same differences in circumstances of competition, *mutatis mutandis,* which have been shown as between Nashville and Bowling Green, apply as between Bowling Green and Louisville, with reference to the rates on oranges from Jacksonville, Fla., as well as to all other traffic via appellant's lines through Nashville and Bowling Green to Louisville. *We here note, however, that the limitation in that part of the order complained of in respect to Louisville to the single commodity of oranges from the single point of origin, Jacksonville, shows clearly that the ostensible fourth section order, of which we here complain, is in truth, as we assert it is, a direct effort to adjust an alleged discrimination under the third section of the Act, complained of by the Bowling Green Business Men's Protective Association, in Docket No. 4310, before the Commission, and is not at all an order having in view the determination of appellant's Fourth Section Application, or any part thereof.* The discrimination in rates on oranges from Jacksonville, Fla., to Bowling Green, Ky., and Louisville, Ky., was specifically complained of in paragraph XII of the complaint of the Bowling Green Business Men's Protective Association (121). The eighth item of the syllabus of the report of the Commission (132) refers specifically to discrimination in rates on oranges from Jacksonville, Fla., to Bowling Green, as compared with rates contemporaneously maintained on the same commodity from Jacksonville to Louisville. The report of the Commission (145-146), takes up the question of the rates on oranges from Jacksonville as a question of discrimination under the Third

Section of the Act to Regulate Commerce and shows that the Commission considered in this connection only the specific competition at Louisville with the California and imported oranges, and ignored entirely the general and elaborate justification for relief from the Fourth Section on business through Nashville to Louisville, which appellant presented in response to the Fourth Section questions: and the affirmative order of the Commission in Docket No. 4310, which was vacated, *and which, if it had not been vacated, would have expired by limitation of law, and by its own terms, on the first day of September, 1914, specifically provided for the alleged discrimination with respect to oranges from Jacksonville, in the following words* (148):

> "IT IS FURTHER ORDERED, That said defendants, according as they participate in the traffic, be, and they are hereby notified and required to cease and desist on or before the first day of September, 1912, and for a period of two years thereafter, to abstain from charging, demanding, collecting or receiving any higher rates for the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., than those contemporaneously maintained over their lines on the same commodity from said Jacksonville to Louisville, Ky.
>
> "It is further ordered that said defendants, according as they participate in the traffic, be and they are hereby notified and required to establish on or before the first day of September, 1912, and for a period of two years thereafter, to maintain and apply to the transportation of oranges from Jacksonville, Fla., to Bowling Green, Ky., rates which shall not exceed those contemporaneously maintained over their lines on the same commodity from said Jacksonville to Louisville, Ky."

And yet by an ostensible Fourth Section Order, directed to the specific commodity, oranges, between the specific points, mentioned in the complaint of the Bowling Green Business Men's Protective Association, the Commission seeks to make effective *in perpetuity* an order correcting an alleged discrimination under the Third Section of the Act to Regulate Commerce, which the policy of Congress has determined should not be effective for more than two years, even if rightfully issued by the Commission, and in issuing its so-called Fourth Section Order with respect to oranges from Jacksonville the Commission clearly ignored the evidence presented by appellant with respect to the Fourth Section questions and made its order contrary to the indisputable nature of the evidence, arbitrarily and without power so to do.

The third assignment of error is with reference to reading in evidence herein of the affidavit of Mr. C. B. Compton, filed in the Commerce Court, April 25, 1913. This affidavit appears at printed page 616 of the record. And, we think that, having been filed in the United States Commerce Court on the same day on which was given the testimony of Mr. A. R. Smith (601-615), and the same day on which the case was taken under advisement by the Commerce Court (615), and the case having proceeded to a final decree in the Commerce Court, the affidavit was already in the record when, the existence of the Commerce Court having been terminated, the case was remanded by this court to the District Court for trial. But it does not seem to us that the admission or rejection of this affidavit is at all material, for the reason that we

contend that the order complained of is void upon the record before the Commission itself, and that the Commission was without power to make the order complained of, and if our contention in this regard is true, it was not and is not necessary for our case that any additional testimony be taken. It was merely desirable that the effect of the Commission's order, which could not have been foretold until the Commission made it, should be shown, especially in connection with our application for a preliminary injunction. This view was practically conceded by counsel for the Interstate Commerce Commission (603-614), in arguing against the admission of any additional evidence in the Commerce Court. We shall, therefore not press at this time assignment of error No. 3, that the court erred in sustaining exceptions and objections to the reading as evidence herein of the affidavit of Mr. C. B. Compton.

We think that, as set forth in assignment of error No. 4, the lower court erred in sustaining exceptions and objections of defendant to the reading as evidence herein of the certified copy of the transcript of the stenographer's notes of the testimony and exhibits, taken in I. C. C. Docket No. 4310 on April 14, 1914. The intimate connection between the case upon the complaint of the Bowling Green Business Men's Protective Association, I. C. C. No. 4310, and that portion of appellant's Fourth Section Application No. 1952, in response to which the order complained of herein was ostensibly issued, has been hereinabove set forth. The Commission itself consolidated these two cases in its report and in its orders (131-

150), and the Commission denied appellant's petition for rehearing in these cases (150-161, 165). The Commission of its own motion (619) reopened Docket No. 4310, and appellant, through its attorney, Mr. Burger, offered, by presenting written copies, in accordance with the rules of the Commission (659-660), certain testimony of Mr. Lee Howell, President of the Evansville & Bowling Green Packet Company, bearing upon the alleged control by the Railroad Company of river competition at Bowling Green. Inasmuch as counsel for the Commission have, on other occasions, objected to the introduction of parts of records before the Commission into court records, the entire record upon the rehearing in Docket No. 4310, was offered by appellant, but that part material to appellant's case, and which appellant desires to have considered in connection herewith, is the testimony of Mr. Lee Howell, which is set out in full at printed pages 675 to 678, inclusive, of the printed record herein. We have, from the inception of the case in the Commerce Court, contended not only that the Commission's finding with respect to an alleged community of interest and control between the Boat Line and the Railroad at Bowling Green, is without legal effect upon the question of competition at that point, but also that the Commission's finding in this respect is not sustained by any evidence, and these points are covered by our assignments of error Nos. 13, 34 and 35 (22-24) upon the present record. We contend, upon the principles enunciated by this court in the New Orleans Board of Trade Case (227 U. S. 88, 91-93), that the Commission could not and can not lawfully treat as evidence

the correspondence between Mr. D. M. Goodwyn, appellant's General Freight Agent, and Mr. Lee Howell, President of the Evansville & Bowling Green Packet Company, set forth in the Commission's report (139-140) and relied upon by it to show a community of interest existing between the railroad company and the packet company, because the introduction of said correspondence in evidence was opposed by counsel for appellant, as shown by the Commission's own report (139), and by the transcript of the record before the Commission (369), from which it appears that the correspondence in question was exhibited to the Commission's Examiner with the restriction that it was not to be made a part of the record. Regardless of this restriction, and after the hearing in the case was closed, the correspondence, over counsel's objection was made a part of the record. The Commission denied appellant's petition for rehearing and appellant has never been afforded an opportunity to meet, rebut or explain the letters to which the Commission attached such importance in its report, and appellant has been denied substantial justice in this regard. Certainly substantial justice demanded that when, in addition to the testimony of its own officers, appellant offered the testimony of the president of the Packet Company to show that no such community of interest existed or exists, as found by the Commission, such evidence should be admitted and considered. When this flimsy and unlawful foundation of the Commission's finding as to a community of interest at Bowling Green is removed, and it is remembered that the Commission's finding of a

community of interest at Nashville between appellant and the N., C. & St. L. R'y is based not upon any legal evidence, but upon information obtained according to the Commission's own report (141) from an annual report made by appellant to the Commission, which was not in the record, the whole theory of estoppel, with which the Commission seeks to meet appellant's affirmative conclusive showing, with respect to competition at Bowling Green and Nashville, falls to the ground, and the importance of securing to appellant substantial justice in matters of evidence before the Commission provided by the principles laid down in the *New Orleans Board of Trade Case, supra,* becomes apparent. We shall discuss assignment of error No. 4 as a point under the larger specification of error that the court erred in not holding the order complained of void, because it is contrary to the indisputable nature of the evidence and is not supported by any evidence and is arbitrary, and the Commission erred as a matter of law in making the order upon the evidence before it.

That the court erred as set forth in our seventh assignment of error, with reference to the hearings in the Fourth Section Case and upon the complaint of the Bowling Green Business Men's Protective Association is patent from the records to which we have hereinabove referred, but it does not appear that this assignment is material to our case, and, therefore, it will not be pressed. All of the other assignments of error set forth on printed pages 21 to 24, inclusive, of the record may be grouped as points under the following specifications, to-wit:

The lower court erred in dismissing the action and in not granting the relief prayed for by appellant, because:

(1) The order complained of is not such a negative order or order of denial as is contemplated by the Fourth Section of the Act to Regulate Commerce, and the Commission was without power to make the order either under that section or under any other law;

(2) The order is void because it is contrary to the indisputable nature of the evidence, and is not supported by any evidence and is arbitrary, and the Commission erred as a matter of law in making the order upon the evidence before it.

We accordingly set forth first the specifications or particulars wherein the decree is alleged to be erroneous, and next the points to be discussed under each specification:

SPECIFICATION OF ERRORS.

I.

The lower court erred in dismissing the action and in not granting the relief prayed for by appellant, because the order complained of is not such a negative order or order of denial as is contemplated by the Fourth Section of the Act to Regulate Commerce, and the Commission was without power to make the order either under that section or under any other law.

II.

The lower court erred in dismissing the action and in not granting the relief prayed for by appellant, because the order is void because it is contrary to the indisputable nature of the evidence and is not supported by any evidence and is arbitrary, and the Commission erred as a matter of law in making the order upon the evidence before it.

POINTS.

I.

The order complained of is not such a negative order or order of denial as is contemplated by the Fourth Section of the Act to Regulate Commerce and the Commission was without power to make the order either under that section or under any other law.

(a) The order is not a negative order.

(b) The order is not responsive to petitioner's Fourth Section Application No. 1952, but is responsive solely to the complaint of discrimination under the Third Section of the Act in Docket No. 4310.

(c) The effect of the order complained of is to require the reasonable rates to and from Bowling Green to be reduced and to increase the violation of the literal provisions of the long and short-haul clause, and these things the Commission is without power to effect.

(d) The Commission's order is broader than the hearings held in connection therewith, and hence deprives petitioner of its property without due process of law.

II.

Even if the order complained of is a negative order or an order of denial such as is contemplated by the Fourth Section of the Act to Regulate Commerce, the order is void because it is contrary to the indisputable nature of the evidence and is not supported by any evidence and is arbitrary, and the Commission erred as a

matter of law in making the order upon the evidence before it.

(a) The uncontroverted facts of record show that the differences in the circumstances and conditions affecting the transportation of property, to, from and through Louisville, Ky., and Nashville, Tenn., as compared with the circumstances and conditions affecting the transportation of property to and from Bowling Green, Ky., are such as to justify discrimination either under the Third Section or under the Fourth Section of the Act to Regulate Commerce.

(b) The power of the Commission to pass upon applications for relief filed under the Fourth Section of the Act to Regulate Commerce as amended, is subject to the right of the carriers to meet competition and to charge reasonable rates, and is limited by the settled construction of the Act by this Court, and particularly by the construction of the First, Third and Fourth Sections of the Act.

(c) The rates to and from Bowling Green are not and are not shown to be unjust or unreasonable in and of themselves or otherwise in violation of Section One of the Act to Regulate Commerce, and the Commission in denying relief in respect to the Nashville rates, notwithstanding the intermediate Bowling Green rates are just and reasonable in and of themselves, exceeded the limitations fixed by law on the exercise of its powers under the Fourth Section.

(d) The acceptance of lower rates to and from Nashville than the rates in effect to and from intermediate points by the Louisville & Nashville Railroad was not and is not voluntary, but is the necessary result of actual compelling competition at Nashville.

(e) The Third Section of the Act to Regulate Commerce prohibits only such preferences as are unjust or

unreasonable, and as a general rule those facts and matters which carriers, apart from any question arising under the Act, would treat as calling, in a given case, for a preference or advantage, are facts and matters which the Commission should consider in forming its judgment whether such preference or advantage is undue or unreasonable within the meaning of the Act.

(f) It having been established, as it was in the case at bar, that lower rates to one point, such as Nashville, than are in effect to another, are due to competition which is real, substantial and compelling, then the preference so arising or produced can not be held in legal effect to be an undue or unjust prejudice under either the Third or Fourth Sections of the Act to Regulate Commerce, and the Commission's conclusion that Nashville was given an undue preference and Bowling Green subjected to an unjust disadvantage was not warranted or sustained by any evidence, and the Commission erred as a matter of law in this regard.

(g) The Commission's findings with respect to the force and effect of railroad competition at Nashville are contrary to the indisputable nature of the evidence.

(h) The order complained of places upon petitioner the burden of either inducing other railroads at Nashville to advance their rates to and from Nashville or reducing its own reasonable Bowling Green rates, and in this respect is unjust, unlawful and oppressive.

(i) Neither the common law nor the Act to Regulate Commerce requires equality of charge, except where the services are similar.

(j) The uncontradicted testimony shows that water competition at Nashville was in the past and still is actual, active, and controlling upon the adjustment of rates to, from and through that point, and the Commission finds and reports this to be a fact.

(k) The Commission's finding, with respect to water competition at Bowling Green, is not supported by any evidence.

(l) The Commission's findings, with respect to an alleged community of interest and control between the Boat Line and the Railroad at Bowling Green are not sustained by any evidence.

(m) Even if a control or community of interest between petitioner and the Packet Company at Bowling Green did exist, such fact would not operate to render the acceptance by petitioner of lower rates to Nashville than to Bowling Green, in order to meet competition at Nashville an undue or unlawful preference to Nashville in violation of either the Third or the Fourth Sections of the Act to Regulate Commerce, and the Commission erred as a matter of law in holding that it does.

(n) The denial of relief in respect to rates on oranges from Jacksonville to Louisville was likewise unlawful and should be corrected.

(o) The order of the Commission is based exclusively upon the theory of estoppel, which theory the Commission is without power to consider or enforce.

ARGUMENT.

I.

The Order Complained of is Not Such a Negative Order or Order of Denial as is Contemplated by the Fourth Section of the Act to Regulate Commerce and the Commission was Without Power to Make the Order Either Under that Section or Under Any Other Law.

(*a*) *The order is not a negative order.*

We repeat the substantive parts of Fourth Section Order No. 1361 of the Interstate Commerce Commission herein specifically complained of as follows, to-wit:

> "It is ordered, That that portion of said Application No. 1952, which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.
>
> "It is further ordered, That that portion of said Application No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912."

This order affirmatively requires and has caused the doing of acts affirmatively required to be done by the former order of the Commission in the case of Bowling Green Business Men's Protective Association of Bowling Green, Ky., versus Louisville & Nashville Railroad Com-

pany, *et al.*, Docket No. 4310, which order was vacated and set aside by the Commission on October 8, 1912; for example, the order requires, as a condition of appellant's meeting the competition of the Cumberland River at Nashville, which competition the Commission itself found (137) to be *controlling*, the establishment by appellant and other railroads, for the transportation of traffic from New York and related points to Bowling Green, Ky., of rates not exceeding those contemporaneously maintained on the same traffic from the same points of origin to Nashville, Tenn., when such traffic may pass through Bowling Green, *and the order complained of has caused and compelled without any other reason the establishment of such lower rates to Bowling Green.*

That is to say, the order complained of is in substance and effect an affirmative order to remove an alleged discrimination between Nashville and Bowling Green. The order may be complied with either by raising the rates to Nashville or by lowering the rates to Bowling Green. The order is not a negative order denying permission to charge lower rates to Nashville than are charged to intermediate points.

The order complained of is, by its terms, made effective December 1, 1912, and upon its effective date, it required affirmatively the doing of those things which an affirmative order under the Third Section—to cease an alleged discrimination—would have required.

Under the provisions of Section 4 of the Act to Regulate Commerce, from which arise the authority and duty of the Commission in so-called Long and Short-haul or

Fourth Section matters, the Commission in passing upon petitioner's application in the special case of Nashville could have *granted it,* could have *denied it,* or could have *prescribed the extent* to which petitioner might be relieved from the operation of the section, but the Commission did none of these things.

It is clear that the order does not purport to *grant* the application, and the Commission did not *deny* the application, for appellant is permitted to and does, *in compliance with the order complained of,* violate the letter and substance of the long and short-haul clause in the special cases of Nashville, Tenn., and Louisville, Ky., just as fully and completely as it has ever violated that clause in those cases.

The effect of the order *is not to deny any part* of appellant's application for relief from the long and short-haul provision, but, in fact, in the special case of Bowling Green, which has never been heard or determined, the order *required* appellant to further violate that clause by *increasing* the discrimination at Bowling Green.

And the Commission has not prescribed the extent to which appellant may be relieved from the operation of the long and short-haul clause. The maximum and minimum violations by appellant in the special cases of Nashville and Louisville are now the *same* as they were before the order complained of was issued and made effective.

The order is simply an affirmative order under the Third Section of the Act to Regulate Commerce *which require the rates to Bowling Green and Nashville to be the same.*

(*b*) *The order is not responsive to appellant's Fourth Section Application No. 1952, but is responsive to the complaint of discrimination under the Third Section of the Act in Docket No. 4310.*

The order complained of, while under the name and in the form of a Fourth Section Order, is in substance and effect an order under the Third Section of the Act to Regulate Commerce to remove an alleged unreasonable preference or advantage in favor of Nashville and Louisville as against an alleged undue or unreasonable prejudice or disadvantage at Bowling Green.

And the order, while ostensibly made pursuant to petitioner's Fourth Section Application No. 1952, is in reality not at all responsive to the application, but is directly responsive to the issue of unjust preference under the Third Section which arose by the complaint of the Bowling Green Business Men's Protective Association in Docket No. 4310, in direct connection with which docket number, the order complained of was issued.

The order complained of, although under another name and in another form, is the same kind of an affirmative order, with reference to alleged preferences, or relative rates as between the single localities of Louisville, Nashville and Bowling Green, as was the affirmative original order in Docket No. 4310, which was set aside by the Commission.

An affirmative order under the Third Section of the Act to Regulate Commerce would have expired by limitation of law on December 1, 1914, and even if the Commis-

sion had the power to adjust an alleged third section discrimination by an order ostensibly made under the Fourth Section, the limit of the Commission's power in this regard expired on December 1, 1914, and the injunction should now be granted.

(c) *The effect of the order complained of is to require the reasonable rates to and from Bowling Green to be reduced and to increase the violation of the literal provisions of the Long and Short-haul clause, and these things the Commission is without power to effect.*

There was no evidence whatever introduced to show that the rates to and from Bowling Green were unreasonable in and of themselves or in violation of the First Section of the Act to Regulate Commerce. The rates to and from Bowling Green were affirmatively shown to be no higher than just and reasonable rates (302, 354, 517-518).

The Commission itself found that the competition at Nashville was controlling upon the rates at that point, and the effect of the order complained of is, therefore, necessarily to require the reasonable rates to and from Bowling Green, Ky., to be reduced, and inasmuch as the rates to and from Bowling Green were lower than the rates to and from intermediate points, the effect of the order necessarily is to require an increased violation of the provisions of the Long and Short-haul clause at Bowling Green, and these things the Commission is without power to do under the Fourth Section of the Act to Regulate Commerce.

(*d*) *The Commission's order is broader than the Fourth Section hearings held in connection therewith, and hence deprives appellant of its property without due process of law.*

Our objection that the Commission's order is broader than the Fourth Section hearings held in connection therewith is not a mere technical point. The objection goes to the substance of the matter. Some of the particulars in which the order complained of exceeds the scope of the hearings had are pointed out in our supplemental petition (174-175) and were explained by Mr. A. R. Smith in his testimony before the Commerce Court of April 25, 1913 (611-612).

II.

Even if the Order Complained of is a Negative Order or an Order of Denial Such as is Contemplated by the Fourth Section of the Act to Regulate Commerce, the Order is Void, Because it is Contrary to the Indisputable Nature of the Evidence and is Not Supported by any Evidence and is Arbitrary, and the Commission Erred as a Matter of Law in Making the Order Upon the Evidence Before it.

(a) *The uncontroverted facts of record show that the differences in the circumstances and conditions affecting the transportation of property, to, from and through Louisville, Ky., and Nashville, Tenn., as compared with the circumstances and conditions affecting the transportation of property to and from Bowling Green, Ky., are such as to justify discrimination either under the Third Section or under the Fourth Section of the Act to Regulate Commerce.*

The following circumstances and conditions which affect the transportation of property from and through Louisville, Ky., to Nashville, Tenn., are shown by uncontroverted facts of record.

The Commission finds and reports that Nashville is situated on the Cumberland River, which flows into the Ohio River at a point above Paducah, Ky. (134).

The Commission finds and reports that Nashville is also located on the main line of the Louisville & Nashville Railroad, as well as on the Nashville, Chattanooga & St.

Louis Railway, and the Tennessee Central Railroad (133).

The Commission also finds and reports that there appears to be no doubt that the water competition of the Cumberland River has a *controlling* influence on the Nashville and Clarksville rates (137).

Mr. E. K. Bryan, Assistant General Freight Agent of the Illinois Central Railroad Company, testified that the Illinois Central Railroad in connection with the Tennessee Central Railroad competes against the Louisville & Nashville for the movement of traffic to Nashville, Tenn. (520), and the Commission's Examiner, Mr. Gaddess, stated (520) that he did not think there could be any question in this regard.

There is no railroad competition at Bowling Green, and the Commission does not find that the water competition at Bowling Green *is* or ever has been controlling as it is at Nashville. The Commission merely finds that, in its opinion, the *potential* competition at Bowling Green *ought to be* as controlling as it is at Nashville.

(*b*) *The power of the Commission to pass upon applications for relief filed under the Fourth Section of the Act to Regulate Commerce as amended, is subject to the right of the carriers to meet competition and to charge reasonable rates, and is limited by the settled construction of the Act by this Court, and particularly by the construction of the First, Third and Fourth Sections of the Act.*

The power of the Commission to pass upon applications for relief filed under the Fourth Section of the Act to Regulate Commerce as amended, is subject to the right of the carriers to meet competition and to charge reasonable rates, and is limited by the settled construction of the Act by this Court, and particularly by the construction of the first, third and fourth sections of the Act.

The right of a citizen to due process of law must rest upon a basis more substantial than favor or discrimination.

(*Roller* v. *Holly*, 176 U. S. 398-409.)

Prior to the amendment of June 18, 1910, as the result of the various decisions of this Court, the settled construction of the former Fourth Section of the Interstate Commerce Act had come to allow carriers to charge, *of their own motion*, lesser rates for the longer than for the shorter distances, if at the further points the lesser rates were justified by a substantial dissimilarity of circumstances and conditions there prevailing, consequent upon real competition, and *all* competition, provided it possessed the attributes of producing a substantial and

material effect upon traffic and rate-making, could, under the statute, be taken into consideration, whether it was competition of water lines, or competition arising from carriers which were subjected to the Act to Regulate Commerce, or competition not originating at the initial point of the traffic.

Texas, etc., R. Co. v. *Interstate Commerce Commission,* 162 U. S. 197, 220.
Interstate Commerce Commission v. *Alabama, etc., R. Co.,* 168 U. S. 144, 164, 170.
Louisville, etc., R. Co. v. *Behlmer,* 175 U. S. 648, 654, 655, 667, 670.
East Tennessee, etc., R. Co. v. *Interstate Commerce Commission,* 181 U. S. 1, 12; 45 L. Ed. 719.
Interstate Commerce Commission v. *Louisville, etc., R. Co.,* 190 U. S. 273, 284.

The amendment of June 18, 1910, takes away from the carriers the right to depart from the long and short-haul rule in order to meet competition, *of their own motion,* and leaves with the Commission precisely the same power and discretion to permit them to make such departures as it formerly enjoyed. This is so because the words of the former fourth section, which gave the carriers power to act of their own motion, were eliminated, and the proviso vesting discretion in the Commission to grant relief from the operation of that section, in special cases, was left practically unchanged, and the terms of this proviso have at all times embraced in their scope such rate situations as the very ones covered by this argument, where the carriers have been compelled to

depart from the long and short-haul rule because of actual and controlling competition at the further distant points, and have at all times given the Commission full power and authority to grant relief from the operation of that rule in just such cases.

In *Minneapolis & St. Louis Railway Company* v. *Minnesota,* 186 U. S. at page 267, the court, speaking by Mr. Justice Brown, said:

> "It often happens that, to meet competition from other roads at particular points, the companies themselves fix a disproportionately low rate upon certain classes of freight consigned to these points. The right to permit this to be done is expressly reserved to the Interstate Commerce Commission by Section 4 of that Act, notwithstanding the general provisions of the long and short-haul clause, and has repeatedly been sanctioned by decisions of this Court."

See also *Intermountain Rate Cases,* 234 U. S. 476, 483, 485.

And this being established, it follows that the Commission now has, and that Congress intended it should have, a power and a duty to grant relief from the long and short-haul rule, where the departures are induced by actual, genuine competition.

That a contrary intention is not to be imputed to Congress, clearly results, we submit, from the following considerations:

In the first place, had Congress not intended competition to be considered under the Fourth Section, as amended, it would have provided an inflexible long and short-haul rule.

In the second place, it has been for years, and still is, the settled purpose and policy of Congress to promote and encourage the free competition of rival railroads. *United States* v. *Trans-Missouri Freight Association,* 166 U. S. 200; *United States* v. *Joint Traffic Association,* 171 U. S. 505; *Northern Securities Co.* v. *United States,* 193 U. S. 197.

And it would be so manifestly inconsistent, as not to be admitted, that Congress should for years encourage the railroads in their competition with each other, should have forbidden them to agree not to compete with each other, and yet should have intended to say, by its amendment to Section 4 of the Act to Regulate Commerce, that because those roads *have* competed, and, by that competition, have been compelled to accept relatively low rates to the further distant competitive points, they are to now retire from that competition, or else reduce their reasonable, intermediate rates; and equally as inconsistent to say that though the railroads must compete, and are forbidden not to compete, yet they shall do so only at the price of applying the unusually low competitive rates, now in effect at points where competition does exist, to the intermediate points, where competition, or as intense competition, does not exist.

Congress could not have meant, with one hand, to promote competition among railroads and, with the other, to punish them for engaging in such competition.

In the third place, the present Fourth Section provides for the filing of petitions for relief from the long and short-haul rule, and that the Commission shall pass

upon those petitions after an investigation, or, in other words, a hearing, and, of course, it can not ignore the facts developed and evidence adduced at said hearing. If this were not so, it would have been idle and vain for Congress to provide for the filing of such applications and for their investigation by the Commission.

And in passing upon those applications in the light of the evidence adduced to support them, we believe, and submit, that Congress intended for the Commission to continue to give due consideration, force, and effect to the existence of controlling competition, of whatever kind, at the further-distant points.

And, in our view, if, at the hearings on said petitions, the lower rates to the further-distant points are proven to have been caused, and to be necessitated, by *bona fide* and controlling competition, actual, or potential, rail, or water, or market, and the higher rates to the intermediate points are shown to be reasonable *per se,* and not unduly discriminatory, then it was the intention of Congress that the Commission should grant our applications for relief at such points, and we submit that the Commission may not, as *matter of law,* decline to grant our applications for relief at such points, and moreover, if it does so decline, its orders to that effect are unlawful and subject to be, and should be, annulled and set aside by this Court.

These limitations suggested above are eminently practical and reasonable, easily capable of being definitely fixed, and they should operate, we submit, as well on the carriers in asking for authority to make de-

partures from the long and short-haul rule, as on the Commission in granting such authority.

With respect to the rate situations presented in this argument, we submit that the reasonable limitations intended to be imposed upon the Commission in the consideration of our application for relief from the long and short-haul rule are four, and all of them are eminently just and practical.

First. The rates charged by the Louisville & Nashville Railroad Company and its connections to the intermediate points must not be unjust or unreasonable, within the purview of the First Section of the Act.

Second. The acceptance of lower rates to the further distant common and competitive point must not create an *undue* prejudice against the intermediate points; though in determining whether the prejudice is *undue*, regard must be had to the question whether the competition at the competitive point is such as to create a substantial dissimilarity of condition.

Third. The competition at the further-distance common and competitive point must be such as subserves the public interest. It must also be real, material and substantial; and such as to compel the acceptance by the Louisville & Nashville Railroad and its connections of the rates that are accepted by them at that point. 175 U. S. 674, 675, *Louisville, etc., R. R. Co.* v. *Behlmer.*

Fourth. The rates accepted on traffic to the competitive point must yield some profit (though it may be very small) *over the additional cost of the movement of that traffic.*

Within the above limits, any rates which may be accepted by the Louisville & Nashville Railroad and its connections, upon traffic to the further-distant common and competitive points, are, we submit, lawful, and we may not lawfully be required to discontinue them.

This construction of the Fourth Section proviso is expressly approved by the Commerce Court in its decision in the case of *Atchison, Topeka & Santa Fe Railway Co., et al.*, v. *United States of America*, 191 Fed. Rep. 856, where, on page 860, it is said:

> "But to sustain the constitutionality of the proviso in Section 4, it must be read as imposing the duty on the Commission not only to grant exemption from the hard and fast rule when thereby no section of the Act is violated, but also to grant such exemption to the extent that no section of the act is thereby violated; that is, the carrier is entitled under the act to be granted authority to charge as much less as it please for the long haul, than for the short haul, provided the Commission shall first determine that it does not thereby violate any other provision of the law."

And this construction is consonant also with the opinion of this Court in the same case. *Intermountain Rate Cases*, 234 U. S. 476.

"The elements of judgment or so to speak the system of law by which judgment is to be controlled remains unchanged." Intermountain Rate Cases, *supra*, p. 485.

(c) *The rates to and from Bowling Green are not and are not shown to be unjust or unreasonable in and of themselves or otherwise in violation of Section One of the Act to Regulate Commerce, and the Commission, in denying relief in respect to the Nashville rates, notwithstanding the intermediate Bowling Green rates are just and reasonable in and of themselves, exceeded the limitations fixed by law on the exercise of its powers under the Fourth Section.*

There is a strong-established presumption that the Bowling Green rates were just and reasonably low rates.

I. C. C. v. *Chicago Great Western R'y*, 209 U. S. 108, 119, 120.
L. & N. R. R. Co. v. *I. C. C.*, 195 Fed. 541, 545, 557, 566.

Even if the order were an order as to Nashville rates as compared with all intermediate rates instead of an order as to Nashville rates as compared with Bowling Green rates alone, the relief can not be refused under the competitive conditions existing at Nashville, as found by the Commission itself, so long as the intermediate rates were not found to be unjust or unreasonable, and there was no testimony showing or tending to show that the intermediate rates were unreasonable.

There was absolutely no testimony in the record showing that the rates to and from Bowling Green were unjust or unreasonable in and of themselves in violation of Section 1 of the Act, and the Commission having found to exist at Nashville controlling water competition, which

has always been held to justify a departure from the provisions of the long and short-haul clause, the Commission was without power to deny the relief as to Nashville.

(*d*) *The acceptance of lower rates to and from Nashville than the rates in effect to and from intermediate points by the Louisville & Nashville Railroad was not and is not voluntary, but is the necessary result of actual, compelling competition at Nashville.*

The acceptance of lower rates to and from Nashville than the rates in effect to and from intermediate points by the Louisville & Nashville Railroad was not and is not voluntary, but is the necessary result of actual, compelling competition at Nashville.

It is shown by the uncontroverted testimony in the record that—

1. That the Louisville & Nashville Railroad Company was compelled many years ago, because of competition of other railroads, and of boats in the Cumberland River, to accept relatively low rates between the various Ohio and Mississippi River crossings, including Louisville, Ky., and Nashville, Tenn.

2. That the Louisville & Nashville Railroad could not participate in the movement of traffic to Nashville unless it accepted the same rates as made by its competitors to Nashville.

3. That to compel the Louisville & Nashville Railroad to advance its Nashville rates, under the conditions

as they exist today, would merely operate to compel it to desist from handling the Nashville traffic, and would simply result in deflecting the traffic of that city to other routes, and thus entail upon the petitioner, who was inhibited from meeting the competition, although it could do so at a margin of profit, the loss which would arise from the disappearance of such business, without anywise benefiting the public—paraphrasing the language of the Supreme Court in *East Tennessee, etc., R'y Co.* v. *Interstate Commerce Commission,* 181 U. S. 20.

4. That the intermediate rates, including the Bowling Green rates, are just and reasonable, and as low as competition of other carriers, or any other factor, has rendered it necessary for the Louisville & Nashville Railroad Company to accept.

(e) *The Third Section of the Act to Regulate Commerce prohibits only such preferences as are unjust or unreasonable, and as a general rule those facts and matters which carriers, apart from any question arising under the Act, would treat as calling, in a given case, for a preference or advantage, are facts and matters which the Commission should consider in forming its judgment whether such preference or advantage is undue or unreasonable within the meaning of the Act.*

Section 3 of the Interstate Commerce Act provides that it shall be unlawful for any common carrier subject to the provisions of the act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or

any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

In the case of *Interstate Commerce Commission* v. *Baltimore & Ohio Railroad Co.*, Mr. Justice Brown, speaking for the court, said:

> "It is not all discriminations and preferences that fall within the inhibition of the statute; *only such as are unjust or unreasonable.*" * * * "Indeed, the possibility of just discriminations and reasonable preferences is recognized by these sections, in declaring what shall be deemed unjust."
>
> 145 U. S., pp. 276, 277, I. C. C. v. B. & O. R. R.

In the case of *Interstate Commerce Commission* v. *Alabama Midland Railway Co.*, Judge Bruce said:

> "The words 'any undue or unreasonable preference or advantage' plainly imply that every preference or advantage is not condemned, *but such, only, as are undue or unreasonable.*"
>
> 69 Fed. Rep., pp. 231, 232.

In the case of the *Commercial Club of Omaha* v. *Chicago & N. R. Co.*, decided November 18, 1897, the Commission, speaking through Mr. Commissioner Knapp said:

> "It must be remembered that not every inequality in rates constitutes a violation of the law. *Discrimination is forbidden only when it is unjust. Preferences and prejudices are not prohibited unless they*

are undue. The language of the statute implies that there may be discriminations which are not unjust and preferences which are not undue."

7 I. C. Rep., p. 404.

In *Texas, etc., R. Co.* v. *Interstate Commerce Commission,* 162 U. S. 197, 219, 220; 40 L. Ed. 940, the Supreme Court held that:

> "The mere circumstance that there is, in a given case, a preference or an advantage does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act."

The mere fact therefore that there is a preference and advantage to Nashville in the case at bar does not of itself show that such preference and advantage is undue or unreasonable within the meaning of the act.

But the question still remains whether the preference, or prejudice, or discrimination, is *undue or unjust.*

In passing upon that question, it has been held by the Supreme Court that—

As a general rule, those facts and matters which carriers, apart from any question arising under the act, would treat as calling, in given cases, for a preference or advantage, are facts and matters which the Commission should consider in forming its judgment, whether such preference or advantage is undue or unreasonable within the meaning of the act.

> *Texas & P. R'y Co.* v. *Interstate Commerce Commission,* 162 U. S. 197, 220, 16 Sup. Ct. R. 666; 40 L. Ed. 940.

In the "Alabama Midland" case this Court said:

> "The carriers are better qualified to adjust such matters than any court or board of public administration, and, within the limitations suggested, it is safe and wise to leave their traffic managers the adjusting of dissimilar circumstances and conditions to their business. This last sentence does not declare that the determination of the extent to which discrimination is justified by circumstances, and conditions should be left to the carriers, but means only that, when once a substantial dissimilarity of circumstances and conditions has been made to appear, the carriers are, from the nature of the question, better fitted to adjust their rates to suit such dissimilarity of circumstances and conditions than courts or Commission."
>
> *Interstate Commerce Commission* v. *Alabama, etc., R. Co.*, 168 U. S. 144, 172; 42 L. Ed. 414.

The facts which appellant treated as compelling the preference and advantage to Nashville over the Bowling Green and other intermediate points in the case at bar were the location of Nashville on the Cumberland River and on competing lines of railroad, and the controlling competition of all kinds at Nashville, or, in other words, the actual necessities of the situation.

Were it not for competition, the rates from Louisville to Nashville would be on a mileage basis and would be higher than to Bowling Green and other intermediate points, but the inevitable necessity of meeting the boat and other competition has from the beginning forced the railroads to lower the distance rates from Louisville to Nashville, sufficiently to meet the competition, and it is

this necessity existing at Nashville and not at Bowling Green, or other intermediate points, that has compelled the lower rates and consequent preference to Nashville.

In *Interstate Commerce Commission* v. *Cincinnati, N. O. & T. P. R'y Co.,* 56 Fed. 925, 928, affirmed in 162 U. S. 184, 16 Sup. Ct., 700, it was held that "competition, the life of trade, cuts an important figure, and can not well be overlooked or denied"; that a "common carrier can not be required to ignore or overcome existing differences in transportation facilities of different localities, created, not by its own arbitrary action, but by nature or by enterprise beyond its control," citing *Interstate Commerce Commission* v. *Atchison, T. & S. F. R. R. Co.,* 50 Fed. 295, 306. Judge Ross, in that case, cites with approval Judge Deady, in *Ex parte Koehler,* 31 Fed. Rep. 315, 319, as follows: "The power of a corporation to make a rate is limited by the necessities of the situation. Competition controls the charge. It must take what it can get, or, as was said by *Ex parte Koehler* (a previous case), abandon the field and let its road go to rust." Judge Ross adds: "But San Bernardino (in this case Bowling Green), not being a competitive point, it does not get the terminal rates. The proof shows, what is also a matter of common knowledge, that railroads do not make terminal rates unless compelled to do so by competition. Wherever and whenever actual competition exists, the question the carrier has to deal with is not so much what is a fair rate for the service, or what the traffic will bear, but what rate can be got for the service as against the rate offered by the competitor.

Especially is this true when the competitor is a carrier by water, because that is the cheapest known kind of transportation, and is unrestricted by law."

In the case at bar the traffic officials of appellant simply met the competition of other railroads and of boat lines in the Cumberland River at Nashville, and accepted such relatively low rates to Nashville as were necessary to enable appellant to meet that competition—instead of charging its higher but reasonable mileage scale rates as they would have done in the absence of any competition at Nashville.

At the intermediate local stations the conditions were different. There was no rail competition at all to compel the appellant to charge less than its reasonable local scale rates, and there was no water competition at all except at Bowling Green, and *that* competition was not nearly so intense or controlling as the combined force of the rail and water competition at Nashville, and therefore, while appellant's traffic officials did make their rates to Bowling Green low enough to fully meet the competition encountered at Bowling Green, they did not make those rates the same as or as low as they were compelled by the competition at Nashville to accept on traffic to Nashville—because it would have been a useless and unnecessary sacrifice and waste of rates and revenue to do so.

It is certain from the uncontradicted testimony of appellant's chief traffic officials that the competitive circumstances and conditions at Nashville, *and those only,* were the facts and matters which appellant treated as

calling, in the case at bar, for a preference or advantage to Nashville, and it is equally certain, we submit, that if the Court will take those competitive and dissimilar circumstances and conditions at the further-distant point of Nashville into consideration, in forming its judgment as to whether the existing preferences are undue or unreasonable, as this Court has said should be done, then the judgment will be that the existing preferences and advantages to that city are not undue or unreasonable or in violation of Section 3 of the Act to Regulate Commerce. The traffic officials of appellant, acting as reasonable and practical men, took, and necessarily took, these facts and matters into consideration in adjusting their rates and charges to the further-distant competitive point of Nashville, as well as to the intermediate noncompetitive points, including Bowling Green, and if the Interstate Commerce Commission had done likewise—as this Court has said it ought to do—we feel certain, and submit with confidence, that the Commission would have found that what those traffic officials did, the rate adjustment they established, and desire to continue, was natural and right and lawful, and not in violation of Section 3 of the Act.

And we likewise submit that the Commission erred as matter of law in failing to take into consideration these proven circumstances and conditions in the case at bar.

(*f*) *It having been established, as it was in the case at bar, that lower rates to one point, such as Nashville, than are in effect to another, are due to competition which is real, substantial and compelling, then the preference so arising or produced can not be held in legal effect to be an undue or unjust prejudice under either the Third or Fourth Sections of the Act to Regulate Commerce, and the Commission's conclusion that Nashville was given an undue preference and Bowling Green subjected to an unjust disadvantage was not warranted or sustained by any evidence, and the Commission erred as a matter of law in this regard.*

In applying the provision of the Third Section of the Act which makes it unlawful for common carriers to make or give any undue or unreasonable preference or advantage to any particular person or locality, competition which affects rates is one of the matters to be considered.

> *Interstate Commerce Commission* v. *Alabama, etc., R. Co.*, 168 U. S. 144; 42 L. Ed. 414.
> *Interstate Commerce Commission* v. *Louisville, etc., R. Co.*, 190 U. S. 273, 280; 47 L. Ed. 1047.
> See also *Wight* v. *United States*, 167 U. S. 512, 518; 42 L. Ed. 258.
> *Interstate Commerce Commission* v. *Detroit, etc., R. Co.*, 167 U. S. 633, 644; 42 L. Ed. 306.

For the Interstate Commerce Act was not designed to prevent competition.

> *Interstate Commerce Commission* v. *Alabama, etc., R. Co.*, 168 U. S. 144, 165; 42 L. Ed. 414.

Interstate Commerce Commission v. *Baltimore, etc., R. Co.*, 145 U. S. 263; 36 L. Ed. 699.
Texas, etc., R. Co. v. *Interstate Commerce Commission*, 162 U. S. 197; 40 L. Ed. 940.
Interstate Commerce Commission v. *Alabama, etc., R. Co.*, 168 U. S. 144; 42 L. Ed. 414.

It has been shown, *and the Commission so reports and finds, in the case at bar,* that the rates to Nashville are affected and controlled by the competition of the Ohio and Cumberland rivers.

It has also been shown, and it was established by uncontroverted testimony in the case at bar, that the present rates to Nashville are operated by the rail competitors of the L. & N. R. R. Co., and are, therefore, affected by the competition between different railroads.

It has also been shown, and it was established by uncontroverted testimony in the case at bar, that said rates are affected by market competition between Louisville and other cities.

There are numerous decisions by the courts and the Commission of cases where it appeared that there was manifestly a preference in favor of one locality or group of localities or description of traffic, and a prejudice against another locality or group of localities or description of traffic, but where it also appeared, in each case, that the situation complained of was due to and caused by actual and controlling competition, and it was held by the courts and the Commission that, because of the competition, such preference and prejudice were not "undue" or "unreasonable."

The decisions so holding are too numerous to fully cite, but the most important ones in this Court are those rendered in the cases of:

Texas & Pacific Railway v. *Interstate Commerce Commission*, 162 U. S. 197.
Interstate Commerce Commission v. *Alabama Midland Railway*, 168 U. S. 144.
Louisville & Nashville Railroad Company v. *Behlmer*, 175 U. S. 648.
East Tennessee, Virginia & Georgia Railway Company v. *Interstate Commerce Commission*, 181 U. S. 1.
Interstate Commerce Commission v. *Louisville & Nashville Railroad Company*, 190 U. S. 273.
Interstate Commerce Commission v. *Chicago Great Western Railway Company, et al.*, 209 U. S. 108.

It is apparent that the preference to Nashville in the case at bar and the prejudice to Bowling Green and other intermediate points, were as much the result of competition as was the preference and prejudice which existed in any of the above cases, and therefore the decision reached should have been the same, that is, that the said preference and prejudice were not undue or unreasonable.

It has been incontestably established in this case, we submit, that the disparities that exist between the rates to Nashville on the one hand and to Bowling Green on the other, have resulted either from competition at the former point and exactly measure and reflect the force of that competition, or else they arise from the respective geographical and railroad location of these two cities; and we therefore submit that they can not, as mat-

ter of law, under the authorities cited by us, constitute any undue preference or prejudice in violation of the Act to Regulate Commerce.

(*g*) *The Commission's findings with respect to the force and effect of railroad competition at Nashville are contrary to the indisputable nature of the evidence.*

The indisputable facts particularly referred to are these:

The rail competition at Nashville is active and controlling, and compels the Louisville & Nashville Railroad to accept the present relatively low rates to Nashville, or to retire from the Nashville traffic.

No such rail competition exists at Bowling Green, or compels the acceptance of less than the present rates to Bowling Green.

The Commission's *findings of fact* with respect to such rail competition at Nashville were as follows:

> "Turning now to defendants' claim that there exists at Nashville and Clarksville railroad competition that does not prevail at Bowling Green, the record shows that the Tennessee Central Railroad was completed in 1903, and its entry into Nashville and Clarksville had no influence upon the rates at such points. The general freight agent of the Louisville & Nashville Railroad testified that the present rates have remained unchanged throughout the period beginning prior to the construction of the Tennessee Central, and admitted that the city of Nashville, 'got stuck' when it contributed a million dollars to secure this additional rail carrier. The termini of this road are Emory Gap and Harriman, Tenn., on the east, and

Hopkinsville, Ky., on the west. It was formerly leased by the Illinois Central and Southern railways, but is now independent.

"Except for the Nashville, Chattanooga & St. Louis Railway at Nashville, no rail carriers other than the Tennessee Central and the Louisville & Nashville reach Clarksville and Nashville. The general freight agent of the Louisville & Nashville Railroad asserted that 'we have no stronger competition, if as strong, as the Nashville & Chattanooga Railway,' but it is a fact that for many years the Louisville & Nashville Railroad has owned the majority of the stock of the Nashville, Chattanooga & St. Louis Railway. According to the report made by the Louisville & Nashville Railroad to the Commission for the year 1911, the stock so owned amounted to 71 per cent."

The Commission's *conclusions* with respect to such rail competition at Nashville were as follows:

"We are convinced from our consideration of the facts developed in connection with defendants' claim of railroad competition at Nashville and Clarksville that this competition is not of such force and effect as to justify a lower scale of rates at these points than at Bowling Green on traffic the movement of which is through Bowling Green."

But this conclusion necessarily ignored the undisputed facts that the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad actually and actively compete with the Louisville & Nashville Railroad for the movement of traffic to and from Nashville and that these two railroads were actually publishing and accepting a lower scale of rates to and from Nashville than the rates published by the Louisville & Nashville

Railroad to and from Bowling Green and other intermediate points—that is, those other roads were, and are, competing at Nashville on basis of the same rates as the Louisville & Nashville Railroad publishes to and from Nashville.

Transported traffic will almost invariably seek the route offering the lowest rates, other advantages being equal.

The logical and necessary and inevitable inference from these facts is therefore that the Louisville & Nashville Railroad could not advance *its* rates to or from Nashville unless the other roads made a corresponding and similar advance in their rates, without withdrawing from all the competitive Nashville traffic.

The petitioner's third vice president specifically so testified before the Commerce Court and the witnesses before the Commission certainly inferentially so stated and certainly so meant. Nor, we submit, could men conversant with railroad rates and traffic, such as are the members of the Commission, have reasonably drawn any other inference from the proven facts that the Nashville, Chattanooga & St. Louis Railway and Tennessee Central Railroad, with their connections, are actually engaged in competing with the Louisville & Nashville Railroad for the transportation of freight to and from Nashville.

Yet, ignoring the actual fact that the Nashville, Chattanooga & St. Louis Railway is actively engaged in competing for the movement of traffic to Nashville, the Commission finds that the Louisville & Nashville Railroad owns a majority (71 per cent) of the capital stock of the

Nashville, Chattanooga & St. Louis Railway, and from this *finding of fact* it reaches the *conclusion of law* that the competition of the Nashville, Chattanooga & St. Louis Railway at Nashville does not justify the Louisville & Nashville Railroad in accepting lower rates to Nashville than to the intermediate point, Bowling Green, notwithstanding the admitted fact that the Nashville, Chattanooga & St. Louis Railway does not reach or serve Bowling Green.

This conclusion was in turn apparently based on the equally erroneous inference that merely because the Louisville & Nashville Railroad owns stock in the Nashville, Chattanooga & St. Louis Railway it results that those two railroads are not engaged in competition with each other.

But it is not found or suggested that the Nashville, Chattanooga & St. Louis Railway is not actually transporting traffic to and from Nashville at the same rates as are published by the Louisville & Nashville Railroad, or that the Louisville & Nashville Railroad has or can compel the Nashville, Chattanooga & St. Louis Railway to advance *its* rates between common competitive points and Nashville, and thus leave the Nashville traffic to the Louisville & Nashville Railroad or else enable the Louisville & Nashville Railroad to obtain higher rates and revenues on that traffic.

Yet the fact that the competition of the Nashville, Chattanooga & St. Louis Railway at Nashville has not been suppressed both serves to dispel the inference that it does not exist, and to refute the conclusion that it is

so within the control of the Louisville & Nashville Railroad as to estop that company from setting it up to justify its relatively low rates at Nashville.

While the Louisville & Nashville Railroad Company, as the majority stockholder, may be said to get the benefit of some proportion of the revenue which the Nashville, Chattanooga & St. Louis Railway receives from the carriage of freights from and to Nashville, yet if the Louisville & Nashville Railroad Co. could divert to its own line such of those freights as have heretofore been carried by the Nashville, Chattanooga & St. Louis Railway, *it would get all of the revenue, instead of getting only a part of it.*

It is manifest therefore that it would be to the interest of the Louisville & Nashville Railroad to carry every pound of traffic that moves between the north and east and Nashville, and the fact that it does not do this sufficiently proves that it can not.

It is likewise to the interest of the Louisville & Nashville Railroad, and the duty of the traffic officials of that company, to obtain as high prices as practicable for the services performed in transporting goods to and from Nashville—provided always its charges are just and reasonable—and the fact that it has not raised its relatively low rates to and from Nashville, to the reasonable intermediate plane and required the Nashville, Chattanooga & St. Louis Railway to do likewise, sufficiently proves that it can not.

It is manifest, therefore, that there is competition of the most active and effective character between the

Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway for the carriage of traffic to and from Nashville, and that such competition has a controlling effect on traffic and rates at Nashville.

Moreover, the conclusion of the Commission that the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway are in legal effect one road and there is no actual competition between them at Nashville, is in direct conflict with the uncontroverted fact that the Louisville & Nashville Railroad must either meet the rates of the other railroads at Nashville or abandon all traffic (except, of course, local traffic) to and from that city.

As said by Mr. Justice White, in East Tennessee, etc., R'y Co. v. Interstate Commerce Commission, 181 U. S. at p. 24:

> *"Again, the assertion that the road from Chattanooga to Nashville growing out of the stock ownership was in legal effect the Louisville & Nashville Railroad, is necessarily antagonistic to the express finding of the Commission, that the carriers through Chattanooga to Nashville were placed in the position where they must either meet the competition at Nashville or abandon all traffic to that point."*

The Commission also finds that the entry of the Tennessee Central Railroad into Nashville had no influence upon the rates at that point, and that those rates have since remained unchanged, and from these facts it *concludes* that the competition of the Tennessee Central Railroad at Nashville does not justify the Louisville &

Nashville Railroad in accepting a lower scale of rates to Nashville than to Bowling Green.

But the Commission did not find, and could not correctly have reported, that the Tennessee Central Railroad when it was completed to Nashville did not accept and publish precisely the same relatively low rates to and from Nashville as were already in effect via the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, nor that the Tennessee Central Railroad has not ever since been accepting those rates and actively competing for the movement of traffic to and from Nashville on basis of those rates.

Neither did the Commission assume to find that the Louisville & Nashville Railroad Company is able to compel the Tennessee Central Railroad to advance *its* rates to and from Nashville, or to require the Tennessee Central Railroad to operate the same rates to and from Nashville as the Louisville & Nashville Railroad was publishing and charging to and from Bowling Green.

(*h*) *The order complained of places upon appellant the burden of either inducing other railroads at Nashville to advance their rates to and from Nashville or of reducing its own reasonable Bowling Green rates, and in this respect is unjust, unlawful and oppressive.*

That this is the necessary effect of the order complained of is manifest. For by it the Commission, in effect, says: "You can not continue your Nashville rates unless you reduce your rates to Bowling Green, but you

may continue your Bowling Green rates if you advance your rates to Nashville." "But," we answer, "we can not advance our rates to Nashville, because of the competition of the other roads at Nashville." The Commission replies: "We have found that you can and therefore you must, or else reduce your rates to Bowling Green."

What then is the obvious meaning of this? It is clearly that the Louisville & Nashville Railroad, if it desires to escape a burdensome reduction in its reasonable rates to Bowling Green, must go to the other railroad companies that serve Nashville and persuade or compel them to advance their Nashville rates, and if it fails in this, it must reduce its rates to Bowling Green, or embrace the still more burdensome alternative of retiring from the Nashville traffic by advancing *its* rates to Nashville and letting the Nashville business continue to move at the present rates via the lines of its competitors.

It is of this burden thus placed upon us of securing an advance in the Nashville rates of our competitors—as the condition precedent to escaping radical reductions in our rates to Bowling Green, or losses in our traffic to Nashville, that we complain of as being an arbitrary, oppressive, and unlawful exercise of the powers of the Commission.

It is arbitrary and oppressive *because it demands a mere impossibility*—as was proven by competent testimony before the Commission and now offered in this Court.

(*i*) *Neither the common law nor the Act to Regulate Commerce requires equality of charge, except where the services are similar.*

Neither the common law nor "the Commerce Act" requires "equality" of charge, *except where the services are similar.*

In the case of *I. C. C.* v. *B. & O. R. R.*, 145 U. S. 275, Mr. Justice Brown, speaking for the Court, said: "Prior to the enactment of the Act of February 4, 1887, to regulate commerce, commonly known as the Interstate Commerce Act, 24 Stat., Chap. 104, railway traffic in this country was regulated by the principles of the common law applicable to common carriers, which demanded little more than that they should carry for all persons who applied, in the order in which the goods were delivered at the particular station, and that their charges for transportation should be reasonable. It was even doubted whether they were bound to make the same charge to all persons *for the same service* (citing cases), though the weight of authority in this country was in favor of an *equality of charge* to all persons *for similar services.*"

It has been held by the Supreme Court in the "Import case," 162 U. S. 197, as well as in the "Alabama Midland R'y case," 168 U. S. 144, and in the "LaGrange case," 190 U. S. 273, and by the Circuit Court of Appeals in the Georgia Railroad Commission cases, 93 Fed. Rep. 84, that the service rendered by a carrier in the transportation of traffic to a competitive point is not "similar" to the service rendered in the transportation of traffic to a non-com-

petitive point or to a point where the competitive conditions are different; and therefore a person shipping to a non-competitive point is not entitled to an "equality" of charge with one shipping to a competitive point.

In *Ex parte Koehler,* 31 Fed. Rep. 321, Judge Deady said: "The places between which competition in transportation exists between water craft and railways, or *even the latter,* always will and must send and receive freight at lower rates than others not so favored. This is the result of natural advantage, supplemented often by exceptional sagacity and enterprise, and it would be folly in the Legislature to prevent it if it could. As long as people and places differ so widely in capabilities and facilities, social or business equality is impossible. Society can do no more than to give each one an even chance and a fair show to make the most of his opportunities, and leave the result to circumstances over which it has little, if any, direct control."

(*j*) *The uncontradicted testimony shows that water competition at Nashville was in the past and still is actual, active, and controlling upon the adjustment of rates to, from and through that point, and the Commission finds and reports the competition to be controlling.*

It is manifest, therefore, that even if the Louisville & Nashville Railroad were to withdraw from competition at Nashville, the Nashville rates would not be substantially advanced, because Nashville could, and would, continue to draw its freight in by river at relatively low

rates. Also the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad would continue to meet the competition of the Cumberland River boats by maintaining their existing rates at Nashville. The withdrawal of the Louisville & Nashville Railroad from competition at Nashville would therefore not have the slightest tendency to increase the Nashville rates, and the only effect of such withdrawal would be to deflect such Nashville traffic as the Louisville & Nashville Railroad may have heretofore been able to secure, and give it over to the Nashville, Chattanooga & St. Louis Railway, or to the Tennessee Central Railroad, or to the boat lines in the Cumberland River.

In the case of the *E. T., V. & G. R'y Co.* v. *I. C. C.*, 181 U. S. 19, 20, the Court said:

> "Indeed, the findings of fact made by the Commission in this case leave no room for the contention that either undue preference in favor of Nashville (the longer distance point) or unjust discrimination against Chattanooga (the shorter distance point) arose merely from the fact of the carriers in meeting the competition existing at Nashville. The Commission found that if the defendant carriers had not adjusted their rates to meet the competitive conditions at Nashville, the only consequence would have been *to deflect the traffic at the reduced rates over other lines.* From this it follows that, even although the defendant carriers had not taken the dissimilarity of circumstances and condition into view, and had continued their rates to Nashville just as if there had been no dissimilarity of circumstances and condition, *the preference in favor of Nashville* growing out of the *conditions there existing would have remained in force and hence the discrimination which*

there arose against Chattanooga would have likewise continued to exist. In other words, both Nashville and Chattanooga would have been exactly in the same position if the long and short-haul clause had not been brought into play. * * * To compel the carriers to desist from all Nashville traffic under the circumstances stated would simply result in deflecting the traffic to Nashville to other routes, and thus entail upon the carriers who were inhibited from meeting the competition, although they could do so at a margin of profit, the loss which would arise from the disappearance of such business, *without anywise benefiting the public.*"

The case then before the Supreme Court was peculiarly analogous to the case at bar. The destination is the same in both cases. The intermediate point in the *E. T., V. & G. R'y case* was Chattanooga, Tenn., a competitive point served by six competing railroads, while here the intermediate point, Bowling Green, is not served by any competing railroad, although it does happen to be located on the Barren River, and the reason for the lower rates to Nashville are the same in both cases—that is, the presence of active, actual, and controlling competition, both rail and river, at Nashville, and therefore, we submit, the decision of the Supreme Court in the *E. T., V. & G. R'y case, supra,* is conclusive in the case at bar on the question as to the alleged undue preference to Nashville involved in these proceedings.

(*k*) *The Commission's finding, with respect to water competition at Bowling Green, is not supported by any evidence.*

The Commission's finding, with respect to water competition at Bowling Green was not supported by any evidence. It is not denied that by means of locks and dams the Green and Barren rivers are navigable, but it takes more than navigable water to create commerce and competition, and there was no evidence at all before the Commission to show that the navigability of Green and Barren rivers created controlling competition at Bowling Green, which fact involved the essential inquiry.

(*l*) *The Commission's findings, with respect to an alleged community of interest and control between the Boat Line and the Railroad at Bowling Green, are not sustained by any evidence.*

Let us see upon what evidence this conclusion of the Commission is based. Clearly it does not rest upon the testimony of the petitioner's responsible traffic officials, who are peculiarly likely to know, for Mr. D. M. Goodwyn, the General Freight Agent of the Louisville & Nashville Railroad, testifies flatly that the Louisville & Nashville Railroad does not own the Evansville & Bowling Green Packet Company, does not control the Evansville & Bowling Green Packet Company, and does not make or fix the rates of that company to or from Bowling Green.

And Mr. Goodwyn's testimony in that regard is fully substantiated by that of Mr. A. R. Smith, the Third Vice

President of the Louisville & Nashville Railroad Company in the Commerce Court and by Mr. Howell's testimony in Burger Exhibit 1.

The Commission's conclusion is flatly contradictory of this direct and sworn testimony of those three gentlemen *who know the facts.*

The considerations which are stated by the Commission as leading to its conclusion may be summarized as follows:

1. That the president of the packet company was also Division General Freight Agent of the Louisville & Nashville Railroad Company at Evansville, and held both positions.

2. That a former steamboat captain, who had been employed for two years as agent of the packet company at Bowling Green, had received during his service instructions not to solicit freight against the railroad other than that to and from Evansville.

3. That when the steamer Sun was placed in the Green and Barren rivers in 1901 by the merchants of Bowling Green, both the railroad company and the packet company cut rates.

4. That, as a matter of pure hearsay, or report of conversation of one not shown to have any information on the subject testified to, a wholesale merchant at Bowling Green testified that he was informed by a stockholder of the packet company shortly after the Sun ceased operations that the railroad company did not own the packet company, but it guaranteed the packet company against loss in making the fight on the Sun.

5. That after conference on January 30, 1907, with a committee representing the Bowling Green Business Men's Association, the General Freight Agent of the Louisville & Nashville Railroad Company, without any consultation with the president or other representatives of the packet company, reduced the rates on certain commodities from the Ohio River at St. Louis to Bowling Green and wrote a letter notifying the president of the packet company of the action taken in that regard.

We respectfully contend that the facts thus summarized, and cited by the Commission in its report, do not support either in logic or law, the conclusion reached by the Commission that the Louisville & Nashville Railroad Company has had and still retains a dominating influence over the packet company with respect to the making of rates on traffic in which the rail carrier may be interested.

And we further respectfully contend that even if there were a community of interest between the water and the rail carriers at Bowling Green, there were no facts of record before the Commission, and there are no facts at all, to support the conclusion that the effect of such a community of interest is to deprive Bowling Green of any of the benefit of water competition which it should enjoy under normal and natural conditions.

Certainly the fact that the president of the packet company happens also to be the Division General Freight Agent of the Louisville & Nashville Railroad Company at Evansville does not of itself prove that the Louisville & Nashville Railroad owns or controls the packet line. A railroad official has just as much right as any other in-

dividual to have outside pecuniary interests, to own property, and to own stock in other corporations, and he even has a right to spend a portion of his time in other lines of employment—and if his employers do not object to his doing this, the law certainly does not prohibit it. To hold, as matter of law, or even as matter of necessary logical inference, that merely because a man holding an official position with a railroad company likewise holds a position with a corporation operating a boat line, that the railroad company controls the boat line corporation or that there is a "community of interest" between the two, is merely to ignore the plain fact that corporations are owned and controlled by their stockholders and not by their officers, and is inherently illogical and unjust.

It is illogical because it draws a general conclusion from a mere isolated instance. The fact that one of the general freight agents of the Louisville & Nashville Railroad happens to be connected with a steamboat corporation operating in the Green and Barren rivers is a mere incident, susceptible of various explanations, and no more argues a control of the boat company by the railroad than the appointment of that same gentleman to the position of postmaster at Evansville would serve to prove a control of the United States Post Office Department by the railroad company.

The conclusion referred to is unjust, because, if it means anything at all, it is predicated on the assumption —albeit an erroneous one—that the best interest of the packet company would have been subserved by still further reducing its rates, and it inferentially imputes an

intentional neglect of duty to the interests of the packet company by its president, *who had no opportunity to appear and defend himself, and who is thus deprived of the benefit of that presumption of good faith and fair dealing to which, in common fairness, all men are entitled.*

A Captain Bewley testified that he had received instructions not to solicit freight against the railroad for points other than Evansville, but he also testified, on cross-examination (482) that neither Captain Howell nor any of the superior officers of the Evansville & Bowling Green Packet Company stated any reasons for the instructions as to not soliciting freight for Louisville and other points, or for points other than Evansville; and a very clear reason why such instructions should be given appears from Captain Bewley's further testimony (486) that in 1872, boats stopped running through from Louisville to Bowling Green because *"the rates were reduced by rail and it would not pay them to make the trip to Louisville by such small boats as Green River boats are."*

The Commission apparently overlooked the fact that Bowling Green business to and from Evansville is just as competitive between the rail and water lines as is business between Bowling Green, Ky., and Louisville, Ky., or business between Bowling Green, Ky., and other points beyond Evansville, and Evansville is the terminus of the Green and Barren River line of transportation.

It is true that when the steamer Sun was placed in the Green and Barren rivers in 1901, by the merchants of Bowling Green, both the railroad company and the packet company cut rates, but that fact clearly does not sustain

the conclusion reached by the Commission, because the packet company would have been just as likely to have cut the rates in competition with the Sun, which had inaugurated the cutting, if it were not controlled by the Louisville & Nashville Railroad Company as it would if it were so controlled, and so far as the Louisville & Nashville Railroad was concerned, it was merely in good faith meeting the competition at Bowling Green as it found it.

According to the testimony of Captain Bewley for the complainant (490-491), the interest of the packet company in traffic other than that of Bowling Green is nine or ten times as great as its interest in the Bowling Green traffic, and its reasons for driving out a competing line on account of traffic controlled exclusively by it are obviously nine or ten times as potent as any reasons for driving out a boat line competing for the Bowling Green traffic.

And even if, for the sake of argument, we accept as undisputed the rank hearsay testimony in the record with respect to a supposed guaranty to the packet company by the railroad company against loss in making the fight on the Sun in 1901, it is clearly shown by the testimony of complainant's own witness in this regard (312) that the alleged conversation had reference merely to the fight which had been made against the Sun and did not have any reference to a continuing agreement or guaranty.

And even if the railroad company and steamboat line did co-operate in 1901, in a competitive fight with another boat which was cutting rates and taking away traf-

fic from both the railroad and steamboat company, certainly that fact does not necessarily lead to the logical conclusion that the railroad controls the boat line, or even that the railroad and boat line are not in good faith competing with each other for the transportation of traffic to and from Bowling Green.

The Commission sets forth in its report a copy of a letter written under date of January 31, 1907, by Mr. Goodwyn, General Freight Agent of the Louisville & Nashville Railroad, to Captain Lee Howell, President of the Evansville & Bowling Green Packet Company, in which Mr. Goodwyn advises the packet company of the intention of the Louisville & Nashville Railroad Company to reduce certain rates to Bowling Green.

The letter is just such a communication as ordinarily passes between the officials of competing carriers with respect to matters of mutual interest.

One of the objects of the law in requiring tariffs to be printed, posted and filed, is to enable the competitors of a carrier to ascertain what rates are charged by it; and there can be no legal objection to competing carriers furnishing each other information to which the law entitles them.

The courts have never held that it is illegal, or improper, for competing carriers to furnish each other with copies of their tariffs, so long as there is no obligation imposed upon them to maintain such tariffs for any specified time, and so long as each of them reserves the right "by independent action" to change its tariff at any time, upon giving the notice prescribed by law.

The competitors of a carrier, as well as the public, are interested in seeing that the published rates of such carrier are charged so long as they remain in force; and the competitors, as well as the public, are interested in discouraging all secret rebates, or other illegal devices, by which a carrier may vary from its published schedule, so long as the same may remain in force.

The letter quoted by the Commission does not, in word or syllable, afford any ground for the inference that the Louisville & Nashville Railroad Company influences the rates of the packet line. On the contrary, with respect to syrup and molasses, in connection with which advantage had evidently been taken by shippers of a classification conflict, the General Freight Agent of the Louisville & Nashville Railroad Company, after drawing attention to the apparent misclassification, indulged in by shippers, disclaimed even a suggestion of better policing the traffic for the future, and *without conference with the boat line* reduced rates to a basis which would prevent classification juggling by shippers. With respect to woven wire fencing, the General Freight Agent of the Louisville & Nashville Railroad Company, *without conference with the boat line,* reduced the rate and stated the reasons which actuated him in so doing. And with respect to vinegar, C. L., the General Freight Agent of the Louisville & Nashville Railroad Company also drew attention to a lack of definiteness in the classification and again reduced the rate *without conference with the boat line* in order to prevent classification juggling.

Certainly these matters do not prove that the Louisville & Nashville Railroad was suppressing competition at Bowling Green, or controlling the rates of the packet company of that city; they tend rather to the contrary.

Combinations in restraint of trade are prohibited and competing carriers may not make binding agreements as to maintenance of rates. But discussions between competing lines as to rate adjustments are taking place every day in the year, and it is common knowledge that the railroad business of the country is conducted upon this basis.

The Commission erred, therefore, as a matter of law and logic, in holding the facts brought out by the letters referred to in its report to be proof of control of the boat competition at Bowling Green by the Louisville & Nashville Railroad Company, or as in any way affecting the circumstances and conditions of the traffic under investigation in the case at bar.

Moreover, we respectfully submit that there are many facts of record to which we have referred, which are not cited by the Commission in its report and which were evidently not considered by it in arriving at its conclusions above referred to, but which facts. if they had been considered by the Commission, must have prevented the reasonable possibility of such findings as were made in the Commission's report. For example, it is affirmatively shown by the record that the only reduction which the transportation in the Green and Barren rivers has ever caused in the rates at Bowling Green relates to the period *subsequent* to 1893, when the Louisville & Nashville Rail-

road Company is alleged to have obtained control of the river. And whatever force there might otherwise have been in the inference to be drawn from the fact that Captain Lee Howell, who is Division General Freight Agent of the Louisville & Nashville Railroad Company at Evansville, is also the President of the Evansville & Bowling Green Packet Company, is directly met and overcome by the facts testified to by Mr. Goodwyn that the Louisville & Nashville Railroad Company owns no part of the Evansville & Bowling Green Packet Company, and that the Louisville & Nashville Railroad Company had nothing whatever to do with the making of the rates from Evansville to Bowling Green, *which rates were agreed to between the Evansville & Bowling Green Packet Company and the representatives of the citizens of Bowling Green; and that the Louisville & Nashville Railroad Company fixed its rates to meet the boat rates from Evansville* (339).

And it is shown without contradiction in the record that the rates of the Louisville & Nashville Railroad Company are adjusted with relation to the rates of the Evansville & Bowling Green Packet Company, *which rates are the reduced rates of the steamer Sun put in effect by the packet company in 1901 under agreement with certain representatives of Bowling Green* (331-339).

And it is shown without contradiction in the record that the Louisville & Nashville Railroad Company has established numerous special commodity rates lower than the class rates ordinarily applicable to and from Bowling Green, for the express purpose of meeting the

competition of the packet company and as the direct result of that competition, and there is no proof whatever in the record that the Bowling Green rates have been advanced either individually by the Louisville & Nashville Railroad Company or in combination with the packet company, above the normal and reasonable scale which the Louisville & Nashville Railroad Company applies to all of its stations for a like distance.

The conclusion reached by the Commission in its report in this regard necessarily involves casting aside the only evidence which was given by any witness who had knowledge of the facts.

And, moreover, as we have shown, the circumstances upon which this conclusion rests are perfectly consistent with the direct, uncontradicted and unimpeached testimony of the petitioner's witness, Mr. Goodwyn, to the effect that the petitioner does not control the Evansville & Bowling Green Packet Company or its rates.

The rule laid down in 17 *Cyc.*, at page 817 for such cases is as follows: A fact can not be established by circumstances which are perfectly consistent with direct, uncontradicted, and unimpeached testimony that the fact does not exist. Citing *Frazier* v. *Georgia R., etc., Co.*, 108 Ga. 807, 33 S. E. 996. (17 *Cyc.*, p. 817.)

From the application of this rule to the case at bar it results, we submit, that the mere conclusion of the Commission with respect to the fact that there is a community of interest or control exercisable by the Louisville & Nashville Railroad over the Evansville & Bowling Green Packet Company will not be allowed to stand, in view

of the direct, uncontradicted and unimpeached testimony of Mr. Goodwyn before the Commission and of Mr. A. R. Smith and Mr. Howell that the fact does not exist.

Moreover, as we have shown, the Commission's finding that such control does exist was a mere *inference.* We insist that such conclusion was not warranted nor logical, nor properly deducible from the facts proven and we have shown that those facts are readily susceptible to other reasonable inferences.

We submit that the rule applicable here is as follows, as also laid down in 17 *Cyc.,* at page 817: A conclusion is not supported by circumstantial evidence unless the facts relied on are of such a nature and so related to each other *that no other conclusion can fairly or reasonably be drawn from them,* and this requirement is strictly enforced where decisive, direct evidence is probably obtainable, but is not produced. *A fortiori* the circumstances must agree with and support the hypothesis which they are adduced to prove. (17 *Cyc.,* p. 817.)

And the application of this rule to the case at bar will cause this court to overrule and refuse to be bound by the erroneous conclusion of the Commission under discussion.

Moreover, it is an established rule of substantive law that: there is no presumption against legality, or in favor of illegality, that there is a presumption in favor of legality, that facts consistent with legality are presumed to exist; and that where a situation is explainable on the basis of legality it will be assumed that such is the true explanation. (16 *Cyc.,* p. 1082.)

We respectfully invoke that presumption here.

Section 201 of the Constitution of the State of Kentucky provides that "No railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises or property, or pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge or common carrier company, owning a parallel or competing line or structure; or acquire, by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same," and said section is a legitimate exercise of the police power of the State.

> *Louisville & Nashville Railroad Company* v. *Kentucky,* 161 U. S. 677, 678.

It will be seen therefore that it is unlawful for the Louisville & Nashville Railroad Company to do that which the Commission inferred that it has done—that is, to acquire a controlling interest in and thereby suppress the competition of the Evansville & Bowling Green Packet Company.

We respectfully submit that it requires more than the mere inference or conclusion of the Commission, such as is found in the case at bar, to overcome the established presumption of good faith and observance of law in favor of the carrier, especially when that presumption is, as it is in the case at bar, supported by direct, uncontradicted, sworn testimony of witnesses who are in a position to know the facts.

As said by Mr. Justice Brewer, in *Interstate Commerce Commission* v. *Chicago Great Western Railway*, 209 U. S., at pages 119, 120: "It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. * * * Those presumptions of good faith and integrity which have been recognized for ages as attending human action have not been overthrown by any legislation in respect to common carriers" (209 U. S. 119, 120) "and the letter from Mr. Goodwyn upon which the Commission based its conclusion of control by appellant of the boat line was, as we have shown, not legally in the record and could not legally have been considered by the Commission."

We submit therefore that the alleged control of the Evansville & Bowling Green Packet Company by the Louisville & Nashville Railroad Company, or community of interest between those companies, is not proven or sustained by the record, does not in fact exist, and that the Commission's conclusions are, in such respects, not only erroneous but also unfounded and contrary to the indisputable nature of the evidence.

(*m*) *Even if a control or community of interest between appellant and the Packet Company at Bowling Green did exist, such fact would not operate to render the acceptance by appellant of lower rates to Nashville than to Bowling Green, in order to meet competition at Nashville, an undue or unlawful preference to Nashville in violation of either the Third or the Fourth Sections of the Act to Regulate Commerce, and the Commission erred as a matter of law in holding that it does.*

The action of the Commission in this matter is clearly an effort to apply the doctrine of *estoppel,* which the Commission is without power to apply.

(*Southern Pacific Co.* v. *I. C. C.*, 219 U. S. 433, 443.)

(*n*) *The denial of relief in respect to rates on Oranges from Jacksonville to Louisville was likewise unlawful and should be corrected.*

The rates on oranges from Jacksonville to Bowling Green were not shown to be unreasonable. The rates to Louisville were shown to be absolutely controlled by competing roads, and the arguments which we have made with respect to the Nashville rates are equally applicable here, and the same conclusion should be reached.

The Commission based its opinion upon the fact that one of the competing roads is only 4 per cent shorter than the Louisville & Nashville Railroad's route through

Bowling Green, and it is argued that relief should not be granted where competing routes are of substantially the same length. We submit that there is neither reason nor authority for such a rule. The question which a road must ask when it meets competition is not how long is the competing road, but what rate does the competing road make.

The circumstances justifying departure from the Long and Short-Haul rule is "*controlling competition,*" and not length of competing roads.

(*o*) *The Order of the Commission is based exclusively upon the theory of estoppel, which theory the Commission is without power to consider or enforce.*

In short, the Commission having found that the low rates at Nashville were forced by controlling competition of the Cumberland River, it is clear that the sole theory upon which the order of the Commission is based is that of estoppel; that is, the Commission in effect holds that, although there exists the justifying circumstances to relieve from the provisions of the Fourth Section of the Act at Nashville, the carrier may not take advantage of those justifying circumstances, because, in the Commission's opinion, it controls the actions of one carrier on a free river. All the arguments necessarily reduce themselves to this issue, and the Commission being without

power to enforce such a principle or policy, the order of the Commission is necessarily void.

Respectfully submitted,

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October 6, 1917.

INDEX.

	Page.
STATEMENT OF THE CASE	1
THE ORDER INVOLVED	1–2
THE STATUTE INVOLVED	2–3
PROCEEDINGS BEFORE THE COMMISSION	3–4
SCOPE OF THE HEARING	4–9
THE INJUNCTION PROCEEDING	9
QUESTION INVOLVED	9–10
BRIEF OF ARGUMENT	10–13
ARGUMENT	13–41
I. The order is a proper fourth-section order	13–14
II. The order responsive to the application	14
III. Contention that the order will reduce the Bowling Green rates and thereby increase the violation of the long-and-short-haul clause	14–15
IV. Contention that the order is broader than the hearing and therefore void	15–17
V. Different competitive conditions at two places having a compelling influence on rates will warrant the granting of relief from the long-and-short-haul clause	18–19
VI. Rail competition has exerted no compelling influence on rates to either Nashville or Bowling Green, and hence the determinative question is whether either is entitled to an advantage over the other on account of water competition	19–21
VII. Water competition at Nashville and Bowling Green	21–22
VIII. Domination and suppression of water traffic by appellant at Bowling Green	22–32

Page.

IX. A carrier can not set up as a reason for charging lower rates at one place than at another the fact of water competition at the former, when the same competition would exist at both but for the fact that such carrier has suppressed it at the latter 32–35

X. Rail competition 35–40

XI. Rates on oranges from Jacksonville to Louisville 40–41

XII. Conclusion 41

CASES CITED.

Page.

East Tennessee, etc., Ry. Co. v. *Interstate Commerce Commission*, 99 Fed. 52, 63 ..... 12, 38–39

East Tennessee, etc., Ry. Co. v. *Interstate Commerce Commission*, 181 U. S. 1, 15–16 ..... 13, 36

Houston, etc., Ry. Co. v. *United States*, 234 U. S. 342 .. 11, 17

Intermountain Rate Cases, 234 U. S. 476, 483–485 ... 11, 18

Interstate Commerce Commission v. *East Tennessee, etc., Ry. Co.*, 85 Fed. 107, 116 ..... 13, 38

Interstate Commerce Commission v. *Louisville & Nashville R. R. Co.*, 190 U. S. 273, 282–283 ..... 12, 33

Northern Securities Co. v. *United States*, 193 U. S. 197 . 13, 38

O' Keefe v. *United States*, 240 U. S. 294 ..... 11, 17

Pipe Line Cases, 234 U. S. 548 ..... 11, 17

Tap Line Cases, 234 U. S. 1 ..... 11, 17

United States v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516, 527–528 ..... 12, 26

United States v. *Merchants', etc., Association*, 242 U. S. 178 ..... 11, 17

United States v. *Union Pacific R. R. Co.*, 226 U. S. 61, 95; 226 U. S. 470 ..... 12, 26

STATUTES CITED.

Chapter 309, 36 Stat. 539, 547 ..... 2–3, 17

Chapter 32, 38 Stat. 219, 220 17

Judicial Code, section 207 17

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, appellant,
v.
THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.
No. 91.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The decree of the District Court dismissed a bill which sought an injunction against certain parts of an order of the Interstate Commerce Commission acting upon the application of the appellant for authority to continue to charge lower rates for long hauls to and from various competitive points than it charged for shorter hauls to and from intermediate points.

THE ORDER INVOLVED.

The bill attacks only so much of the order as denies those parts of the application which seek authority to continue to charge (1) "lower rates on

traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky.," and (2) "lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky." (R., p. 168.)

THE STATUTE INVOLVED.

The proceeding was under section 4 of the act to regulate commerce, which, as amended by the act of June 18, 1910, is as follows:

> That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less

for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided further,* That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission. * * * (c. 309, 36 Stat., 539, 547.)

PROCEEDINGS BEFORE THE COMMISSION.

Petitioner, prior to the amendment of 1910, had in effect a schedule of rates which included lower rates to and from several hundred points on its system than were accorded to and from intermediate points where the haul involved was shorter. Upon the passage of the amendment of 1910 it applied to the commission for authority to continue all these rates in effect, upon the ground that competitive conditions at these points justified a departure from the long and short haul clause to the extent indicated by the various rates.

Among the competitive points named were Louisville, Nashville, and Bowling Green. But while the rates to and from Bowling Green, which

was a city intermediate between Louisville and Nashville, were somewhat lower than those to and from points intermediate between it and those cities, they were given much lower rates on traffic passing through Bowling Green than were charged on similar traffic for the shorter haul to Bowling Green.

SCOPE OF THE HEARING.

The application, covering, as it did, several hundred different points scattered over a large railroad system, necessarily had to be the subject of a number of separate hearings. One of appellant's lines extended from Louisville to Nashville, and the commission ordered a hearing of so much of the application as dealt with this line, to embrace, as stated by the examiner, all questions as to rates to and from Louisville, Nashville, and Clarksville, which was on a branch connecting with the main line at Bowling Green and intermediate points. (R., p. 497.)[1]

No question, however, arose as to rates to and from any intermediate point except Bowling Green. The effort of appellant was to show that, owing to superior and more compelling competition, both rail and water, at Louisville and Nashville, they were entitled to lower rates than Bowling Green. On the other hand, it was insisted that no such difference in competitive conditions

[1] The order does not deal with Clarksville rates, and they will not be further mentioned.

existed, or at least would exist if appellant had not dominated and suppressed water competition at Bowling Green. This made the issue, upon which a great mass of more or less conflicting evidence was offered.[1]

The part of the order attacked is based on the following findings:

(1) Bowling Green is an intermediate point on appellant's railroad between Louisville and Nashville, being 114 miles south of Louisville and 73 miles north of Nashville. (R., p. 133.)

(2) Nashville is on the Cumberland River. That river is navigable for all steamboats plying on it for six months in each year, for boats not drawing over 3 feet from six to eight months, and for boats drawing 16 inches, or less, the whole year. But general navigation is practically closed for several months each year during low water. (R., p. 136.)

(3) Bowling Green is on the Green River, which empties into the Barren, a tributary of the Ohio. The Green and Barren Rivers are navigable the

[1] There was also pending an application under section 3, on behalf of Bowling Green, attacking the rates in question as unjustly discriminatory. Evidence was taken in each case, which, by agreement, was to be used in both, and the two were heard and considered together. The opinion of the commission and the order first entered were entitled in both cases. This order, however, was later set aside, and the order, part of which is now complained of, entered and entitled only in the 4th section case.

year round from Bowling Green to the Ohio River. (R., pp. 135–136.)

(4) The *potential* competition on the Green and Barren Rivers is as great as that on the Cumberland. (R., p. 137.)

(5) As to the actual river transportation, while the boats operating on the Cumberland are of greater capacity than those operating on the Green and Barren, this advantage is offset by the fact that navigation on the latter rivers is continuous. Boats run regularly between both Bowling Green and Nashville and the Ohio—that is, they run from Bowling Green all the year and from Nashville when navigation is not closed by low water. (R., pp. 136, 137.)

(6) The actual movement of freight on all three of these rivers is now much less than formerly, and the competition on all of them is at present largely potential. (R., p. 137.)

(7) Water competition has had a controlling influence in the fixing of Nashville rates. (R., p. 137.)

(8) It would have had the same effect upon rates at Bowling Green but for the fact that the appellant has dominated and suppressed water competition at that point.

(9) Bowling Green has no railroad except that of appellant.

(10) Nashville has, besides the appellant, the Nashville, Chattanooga & St. Louis and the Tennessee Central. (R., p. 141.)

(11) Appellant owns a majority of the stock of the Nashville, Chattanooga & St. Louis and has the power to control its policy. (R., pp. 141 and 142.)

(12) The building of the Tennessee Central, some years ago, has not had any influence on the Nashville rates. (R., p. 141.)

It is not denied that any of these findings is supported by evidence, except the conclusion that appellant has suppressed water competition at Bowling Green. But it can scarcely be denied that in support of this finding there is evidence that (1) the president of the only packet company operating to Bowling Green has been and is also division general freight agent of the appellant; (2) neither the packet company nor the appellant ever solicited shipments from that point, except in 1901, when Bowling Green merchants were attempting to operate a competing boat; (3) the packet company would not carry freight originating at or destined for points beyond Evansville, which is on the Ohio River near the mouth of the Barren; (4) it even refused to carry freight destined to Louisville after one of its captains had contracted to do so at rates agreed on at a conference which included a representative of the appellant; (5) in 1901, in order to suppress river competition attempted by Bowling Green merchants, both the appellant and the packet company cut their rates, the latter actually carrying freight for nothing

and throwing in a free pass for the shipper; (6) as shown by correspondence produced, the fixing of rates was a pure matter of agreement between the appellant and its own servant, the president of the packet company, as a result of which the rates were just what the appellant wanted them to be.

With respect to the rates on oranges from Jacksonville the finding was:

> It is true that there is no rail competition in the transportation of oranges to Bowling Green, while between Jacksonville and Louisville the lines of the Southern Railway form a through competing route via the Louisville & Nashville Railroad and connections. This competing route, however, is only 4 per cent shorter than the route through Bowling Green, a difference which is negligible in a haul of such length. The rates on the short line do not accord with the provisions of the fourth section. The longer route is neither markedly circuitous nor is it placed at a decided disadvantage as compared with its competitor. We are of the opinion therefore that the defendants are not entitled to apply at Bowling Green a rate on oranges from Jacksonville that is in excess of the rate contemporaneously maintained on the same commodity from Jacksonville to Louisville. (R., pp. 145–146.)

In addition to denying relief to the extent above shown, the order granted relief as to rates on

sugar from New Orleans through Bowling Green to Louisville. (R., p. 168.) This part of the order was not attacked and is still in effect. Except as thus denied or granted, the application was left undisposed of.

THE INJUNCTION PROCEEDING.

A petition to rehear and the original bill in this cause merely challenged the Commission's conclusions as to competitive conditions at the points in question. Later, a supplemental bill was filed in which, for the first time, the claim was made that the hearing was limited to traffic through Bowling Green to and from Nashville *via Louisville,* whereas the order applies to *all* Nashville traffic through Bowling Green. It was alleged that a considerable part of the Nashville traffic through Bowling Green moved not via Louisville but via Norton, Va., or Knoxville and Lebanon Junction, a station between Bowling Green and Louisville.

QUESTION INVOLVED.

The question is whether appellant can properly be relieved of the long-and-short-haul clause upon the ground of water and rail competition alleged to exist at Nashville and not at Bowling Green when it appears that:

(1) The same *potential* water competition exists at both places and the same *actual* water competition would exist at both but for the fact that appellant, through the domination of the packet com-

pany, has itself suppressed such competition at Bowling Green.

(2) The Nashville rates were compelled and forced upon appellant not by rail but by water competition. When it gave Nashville lower rates than Bowling Green, on the theory of superior competitive conditions, its only rail "competitor" was a company a majority of whose stock it owned, and which it, therefore, had the power to control, and the building of another road later has had no influence on rates.

BRIEF OF ARGUMENT.

I.

The fact that the order accomplishes the same result that would have been accomplished by sustaining a petition under section 3 does not keep it from being a valid fourth-section order, since both sections are directed at the same evil—unjust discrimination.

II.

The order specifically responds to the application by simply denying the authority asked for.

III.

Bowling Green having been held to be equal in competitive conditions with Nashville, appellant will, of course, be permitted to continue in force the higher rates to and from points intermediate between it and Nashville.

IV.

The contention that the order is broader than the hearing is an afterthought and not supported by the record. If true, it could not do more than authorize an injunction against so much of the order as applies to traffic not covered by the hearing. But this matter was not called to the attention of the commission, and until this has been done there is nothing for the courts to review. (R., p. 497.)

The Pipe Line Cases, 234 U. S. 548.
The Tap Line Cases, 234 U. S. 1.
Houston, etc., Ry. Co. v. *United States*, 234 U. S. 342.
O'Keefe v. *United States*, 240 U. S. 294.
United States v. *Merchants, etc., Ass'n.*, 242 U. S. 178.

V.

Different competitive conditions at two places having a compelling influence on rates, will warrant the granting of relief from the long and short haul clause.

Intermountain Rate Cases, 234 U. S. 476, 483–5.

VI.

Water competition compelled the Nashville rates and forced them upon all the railroads alike. Hence, rail competition can not be said to have had

any compelling influence over them. (R., pp. 320, 512, 519, 607, 608.)

VII.

The potential water competition at Bowling Green is substantially equal to that at Nashville.

VIII.

It would be equally effective but for the fact that appellant, by dominating the packet company, has succeeded in suppressing it at Bowling Green.

United States v. *Union Pac. R. R. Co.*, 226 U. S. 61, 95.

United States v. *Delaware, L. & W. R. R. Co.*, 238 U. S. 516, 527, 528.

Record, pp. 139–140.

IX.

A carrier can not set up as a reason for charging lower rates at one place than at another the fact of water competition at the former, when the same competition would exist at both but for the fact that such carrier has suppressed it at the latter.

Interstate Commerce Commission v. *Louisville & Nashville R. R. Co.*, 190 U. S. 273, 282, 283.

X.

Since the appellant owns a majority of the stock of the Nashville, Chattanooga & St. Louis, that

railroad can not be regarded as furnishing competition that can have a compelling effect upon rates.

East Tenn., etc., Ry. Co. v. *Interstate Commerce Commission,* 181 U. S. 1, 15, 16.

Northern Securities Co. v. *United States,* 193 U. S. 197.

Interstate Commerce Commission v. *East Tenn., V. & G. Ry. Co.,* 85 Fed. 107, 116.

East Tenn., V. & G. Ry. Co. v. *Interstate Commerce Commission,* 99 Fed. 52, 63.

ARGUMENT.

The insistence of appellant is that the order in question is void, first, because not such an order as the commission had the power to make, and, second, because not supported by evidence.

I.

The order is a proper fourth-section order.

The first contention is that the order is not really one denying relief from the fourth section but " is, in substance and effect, an affirmative order to remove an alleged discrimination " under the third section. The argument is that, because appellant will have to make the same changes in its rates which would be required to comply with an order to remove discrimination, the order can not be regarded as a fourth-section order. But both sections are directed at the same evil—unjust discrimination. Naturally, the same evidence will

frequently justify action under either that happens to be invoked.

II.

The order responsive to the application.

What has been said applies equally to the contention that the order is not responsive to the fourth-section application, but is responsive to the third-section petition filed on behalf of Bowling Green and still undisposed of. A broad denial of what appellant asked for may not be a satisfactory response, but it is difficult to see how anything could be more directly responsive.

III.

Contention that the order will reduce the Bowling Green rates and thereby increase the violation of the long and short haul clause.

This is based on the fact that Bowling Green has been treated by appellant as a competitive point, and hence now has lower rates than are accorded to noncompetitive points intermediate between it and Nashville and Louisville. It is sufficient answer to say that the Commission having found Bowling Green not only to be a competitive point but to be the equal, in point of competition, with Nashville, it can not be doubted that authority will be given to continue the present lower rates to and from that point than are

charged to and from intermediate points where competition does not exist.

IV.

Contention that the order is broader than the hearing, and therefore void.

This contention is suggested, but apparently not pressed with much seriousness. This is manifestly an afterthought, since it was not referred to in either the petition to rehear or the original bill. It rests alone upon the claim that the examiner, in stating the scope of the hearing, limited it to traffic through Bowling Green *via Louisville,* while the order applies to all traffic through Bowling Green to Nashville, including some now shown not to move via Louisville. But the hearing was not limited as now contended. At the opening of the proceedings the examiner distinctly stated the portions of the application assigned for hearing to be not only that relating to traffic through Louisville, but "also that portion of the same application which seeks authority to continue lower rates to and from *all points that are reached via the lines to and from Clarksville and Nashville, Tenn.,* than are charged on like traffic to and from *intermediate stations between Louisville, Ky., and Clarksville and Nashville, Tenn.*" (R., p. 497.) Bowling Green is one of the *intermediate stations*

between Louisville and Nashville. All traffic passing through Bowling Green to or from Nashville is necessarily traffic to or from *points that are reached via the lines to and from Nashville.* In the plainest possible words, then, the examiner stated one of the subjects of inquiry to be *all traffic through Bowling Green to or from Nashville.* And this is precisely the subject covered by the order.

Moreover, there was no suggestion either in the evidence or to the commission that there was any Nashville traffic through Bowling Green which did not move via Louisville. The commission, with appellant's acquiescence, has treated the application as one relating to all such traffic through Bowling Green and has worded its order accordingly. There was no evidence differentiating one part of this traffic from another. Appellant submitted its case upon evidence applying to all and upon which the commission found that to grant the authority would result in unjust discrimination. Appellant can not complain that the application, as all parties understood it, has simply been denied.

But if this contention could have any force, it could only apply to that part of the subject claimed not to have been included in the hearing—traffic not moving via Louisville. It has always

been the practice of parties to attack and the courts to enjoin only those parts of such orders which are claimed or found to be void, leaving the remainder in force.

Pipe Line Cases, 234 U. S. 548.
Tap Line Cases, 234 U. S. 1.
Houston, etc., Ry. Co. v. *United States*, 234 U. S. 342.
O'Keefe v. *United States*, 240 U. S. 294.
United States v. *Merchants, etc., Ass'n*, 242 U. S. 178.

Indeed, this is the jurisdiction expressly given the courts by statute. (C. 309, 36 Stat. 539; Judicial Code 207; 38 Stat. 219, 220.) And appellant recognized this by attacking only a part of the order in the present case.

Besides, if the court should be of opinion that only traffic via Louisville was included in the hearing, and that the order is void as to all other traffic, nothing practical would result. The situation would simply be that the application for relief as to traffic via Louisville is denied, and no action at all has been taken as to other traffic. There would be nothing to enjoin. The jurisdiction of the courts is purely revisory. Until, therefore, appellant has invoked the action of the commission, and it has acted or refused to act, the courts are without jurisdiction.

V.

Different competitive conditions at two places having a compelling influence on rates will warrant the granting of relief from the long-and-short-haul clause.

It must be borne in mind that this is an application on the part of a carrier for relief from the long-and-short-haul clause. The prohibition of that clause against charging less for a long haul through a given place than for the shorter haul to that place is now of universal application except when the carrier makes such a special case as to justify the commission in granting relief. Here the application is based alone on alleged differences between the competitive conditions at Nashville and those at Bowling Green. The burden is on the carrier to prove every fact necessary to make out its case.

The general rules applicable to cases of this kind are now too well settled to require further discussion. They are:

(1) When two places are on the same line and there are no material differences in competitive conditions, the application of the long-and-short-haul clause is imperative.

(2) The existence of competitive conditions at one place which have a compelling influence on rates, when such conditions do not exist at another, may justify authority to depart from the clause in question.

Intermountain Rate Case, 234 U. S. 476, 483–485.

And in the application of these rules to the present case the United States maintains two other propositions, viz:

(1) One place can not be said to have an advantage over another in competitive conditions when the potential competition is the same at both, but, through agreement, collusion, or other act of the carrier seeking relief, is not permitted to become real competition at one while it does exert an actual influence on rates at the other.

(2) One place can not be said to have an advantage over another in rail competition merely because it has more railroads, if, as a result of common ownership or control, agreement, or other causes, competition between such railroads has not, in fact, had a compelling influence on rates.

VI.

Rail competition has exerted no compelling influence on rates to either Nashville or Bowling Green, and hence the determinative question is whether either is entitled to an advantage over the other on account of water competition.

This is manifestly true as to Bowling Green, for the only railroad which reaches it is that of appellant. It is equally true of Nashville, for the commission has found, and appellant insists, that in the fixing of the Nashville rates the controlling influence was exerted by water competition. Water competition would, therefore, have compelled the present rates and would require them to be main-

tained if the appellant owned the only railroad that enters Nashville. The finding that rail competition does not compel these rates is supported by the testimony of appellant's own witnesses. One witness says that the original reason for giving Nashville lower rates than intermediate points was "to meet the boat competition." (R., p. 519.) No rail competition entered into this. Another witness, after explaining the then existing means of water transportation, said:

> * * * When rail connection was established between Nashville and the Ohio River, the railroads simply accepted the situation they found, which had been previously created by the transportation lines operating on the river. (R., p. 512.)

In other words, the present rates were forced on all the railroads by water competition and not by competition among themselves.

It is made equally plain that these rates are continued in force at present, not by rail competition but by water competition either actual or potential.

One witness says:

> * * * While water transportation is not used to so great an extent as formerly, the river and the facilities that it offers still exists, and the steamboat competition, therefore, may be said now to be largely potential, but it is certainly amply strong enough to prevent any material rate changes, independent of other conditions, prevailing for many years, and at this time, at Nashville. (R., p. 320.)

And another says that, after discussing with other rail carriers the question of raising Nashville rates, he does not think they would agree, but the significant reason is that " it will immediately invite added river competition." (R., pp. 607–8.) In other words, the railroads would all like to raise rates but are deterred by water competition. It can not, therefore, be said that the rates which appellant seeks to continue are in any sense forced upon it by rail competition. Water competition alone is responsible for them. This, of course, justifies the granting of authority to charge lower rates to Nashville than to intermediate points which do not possess similar advantages in the way of water competition. Hence the decision of this case must turn upon a comparison of Nashville and Bowling Green in point of water competition.

VII.

Water competition at Nashville and Bowling Green.

In comparing the water competition at Bowling Green with that at Nashville we may start with the statement that potentially Nashville has no advantage. Each is located in a navigable tributary of the Ohio. Bowling Green is nearer the Ohio. Navigation to and from Bowling Green is open all the year round, while at Nashville it is closed for several months each year. Boats operate between both cities and the Ohio. Those at Nashville are

somewhat larger, but this is offset by the fact that those at Bowling Green operate all the year. The volume of river traffic is greater at Nashville, which is much the larger city. The evidence is conflicting as to the comparative volume on the two rivers as a whole.

The volume of river traffic is much less at both places than formerly, very much the greater part now moving by rail, so that water competition at both is largely only potential.

At Bowling Green this competition has been effective to the extent of giving lower rates than are accorded to noncompetitive points intermediate between it and Nashville. But at Nashville it has had the effect of giving much lower rates than those to Bowling Green.

The inquiry is, what has caused this difference in effect resulting from substantially the same conditions?

VIII.

Domination and suppression of water traffic by appellant at Bowling Green.

The answer which the record makes to the above inquiry is that, at Nashville, the appellant has either been content to keep its hands out of the management and control of river traffic or has been unable to successfully interfere; and thus water competition has had full effect, while at Bowling Green, through agreement, collusion, or common management, it has succeeded in control-

ling river rates, and thus, to a very large extent, suppressed the competition that would otherwise exist. The finding of the commission to this effect is challenged, but the specific facts upon which the finding is based are unchallenged. The question is, therefore, whether these facts furnish evidence to support the commission's conclusion.

1. Much of the brief of counsel is devoted to showing that the appellant does not *own* the only packet company which now operates boats to Bowling Green. This may be true, for such ownership is prohibited by the Kentucky statute cited by counsel. But there are more insidious, though equally effective, means of control than direct ownership. And the significant and outstanding fact is that *appellant's division general freight agent* (the man in charge of its traffic at Bowling Green) *is also president of the packet company.* It does not appear whether appellant selected the packet company's president for its agent, or the packet company selected appellant's agent for its president; but the fact is that the same man has for years filled both positions. Such a thing is not likely to happen by accident, and is sure not to continue if the two companies are competing in good faith.

It is insisted that no adverse inference should be drawn from this fact because, it is said, it is neither unlawful nor unusual for a man to have a part in the management of two corporations.

Thus, broadly expressed, the statement is true. But the destroying effect upon competition and the tendency to promote unlawful combinations, of such common control of competing corporations are now so well recognized that modern legislation has been sternly directed against interlocking directorates and other common agencies. The holding of these two positions at least bordered very closely upon a violation of the spirit of the Kentucky statute referred to. But whether positively unlawful or not, it was most unusual and equally foolish if it was intended that there should be real competition between the two companies. When two corporations are, in fact, trying to get the same business, they do not employ the same man for that purpose. No man can serve two masters with conflicting interests. And when we find two masters employing one man to serve their apparently conflicting interests, the conclusion can not be escaped that, through a mutual understanding, competition is not to enter into the conduct of the business intrusted to him. It would be a simple man, indeed, who would expect, in this case, that appellant's agent would ever make, for his packet company, rates unsatisfactory to his employer. If he should persist in such a course, his days as appellant's agent would surely be few and full of sorrows.

And, as was to be expected, this joint representative has been entirely indifferent as to whether

Bowling Green traffic moved by his boats or his railroad. Since, except during a short period when other parties were attempting to operate boats, all such traffic had, of necessity, to move by the one or the other, he has not solicited business for either. If the two companies had been really competing, the well-known methods of soliciting freight agents would have been very much in evidence. This peaceful result must have come from an understanding between the two companies. Such an understanding could not be entered into openly, for it is now universally condemned by law. Hence, it is rarely susceptible of direct proof. But, in this case, the employment of a common representative and his utter indifference as to whether business went to one company or the other is evidence lacking but little of the qualities of directness.

If nothing else appeared, there would be ample evidence to support the conclusions that these two companies controlled the traffic at Bowling Green, through an understanding, and the employment of a common representative; that there was, in fact, no competition between them, but, instead, a division of traffic upon agreed rates; and that, in this way, the potential water competition at Bowling Green has been denied its rightful effect.

Such facts as those recited above have been held by this court to be not only evidence, but evidence that can not be ignored, that there has been a sup-

pression of competition. Thus, in *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, 95, it was said:

> After acquiring the Southern Pacific stock, Mr. Harriman, who dominated in the affairs of the Union Pacific, became president and chairman of the executive committee of the Southern Pacific Company, with the same ample power which he had in like positions in the Union Pacific Company and the companies owned and controlled by it. These facts can not be lost sight of in determining the object and scope of the transaction in question, which resulted, as we have said, in that unified control which has in its power the suppression of competition.

See also *United States* v. *Union Pacific Railroad Co.*, 226 U. S. 470.

And in *United States* v. *Delaware, Lackawanna & Western Railroad Co.*, 238 U. S. 516, 527, 528, it is said:

> In this situation there may have been no impropriety in the railroad company taking the preliminary steps of organizing such a corporation. Neither was it illegal for the stockholders of the railroad company to take stock in the coal company, for there are many instances in which the law recognizes that there may be diversity of corporate interest even when there is an identity of corporate members. A city and

the county, in which it is located, may both have the same population but different corporate interests. Many private corporations have both stockholders and officers in common, yet they may nevertheless make contracts which will bind both of the separate entities. But whenever two such companies, thus owned or managed, make contracts which affect the interest of minority stockholders, or of third persons, or of the public, the fact of their unity of management must be considered in testing the validity and *bona fides* of the contracts under review.

2. But more appears. What was to be expected occurred. That the fixing of the rates of the packet company was a mere matter of "suggestion" by the officials of appellant to their agent, the president of the packet company, is clearly shown by two letters which, almost by accident, got into the record. It seems that in 1907 complaint was made that certain commodity rates were not properly based on the packet company's rates. The appellant found it expedient to make some changes. It immediately reported its action to the president of the packet company in a letter which leaves no doubt that in settling such disputes with the public it acted for both companies and was equally free to either lower its own rates or "suggest" that the rates of the packet com-

pany be raised. Thus, speaking of a discrepancy in the rates on syrup and molasses, the letter said:

> * * * I do not mention it with any purpose of charging the boat line with bad faith. The mistake is not unnatural at all and is readily accounted for. Considering the conditions existing at Bowling Green just now, I did not believe it wise to suggest that your boats had better handle this business hereafter at 15 cents, but let it stay at 12½ cents, but it was arranged that we would reduce our rail rate, basing it upon a rate of 12½ cents, Evansville to Bowling Green. (R., pp. 139–140.)

This speaks volumes as to the perfect understanding between the two companies. The packet company is exonerated from the implication of bad faith in charging a rate which had not been approved by appellant. But why any thought of bad faith if rates were not being fixed by secret agreement between the two companies? And why think of "suggesting" a raise in rates by the packet company if appellant did not secretly exert the same control over the rates of this company that it did over its own?

3. Nor was the making of rates the only matter with respect to which the freight agent's packet company played into the hands of his employer. As has been shown, it refrained from soliciting business. It did more. The Green and Barren Rivers were first improved for navigation by dredging and locks built by the State of Kentucky.

In 1870 the State leased the use of the rivers and locks to the Green & Barren Rivers Navigation Company for 30 years. Thereafter that company operated boats. At first these boats plied between Bowling Green and Louisville, but, after 1872, they were operated only between Bowling Green and the Ohio River at Evansville. However, the navigation company formed connections at Evansville by means of which it gave through rates to and from Louisville, Cincinnati, and other points. In 1888 the State ceded to the United States the river improvements, and the United States bought from the navigation company its remaining interest in the lease. There was then, for the first time, free navigation on these rivers. For a short time thereafter several independent boats were operated, one being owned and operated by Capt. Lee Howell. But very soon all of these boats that remained on the river were owned or controlled by Howell. The next that appears is that the boats and navigation were all in the hands of the present packet company, and Capt. Lee Howell was president of that company and freight agent of appellant. At first it seemed to be the policy of that company to continue the practice of making through rates. At least, a through rate on tobacco from Bowling Green to Louisville was agreed on. An enterprising captain, evidently to the surprise of everybody, obtained a contract for the transportation of a large quantity of tobacco at these rates.

When 200 or 300 hogsheads had been transported, President and Freight Agent Howell gave orders that no more be received. No more through rates were made. Instructions were given to solicit no traffic through Evansville, but only that originating at or destined to Evansville. In other words, the packet company confined itself to traffic between Evansville and Bowling Green, and left appellant without competition for Bowling Green traffic moving through Evansville. It is easy to see how this conferring of a monopoly on appellant would be highly satisfactory to *Freight Agent* Howell. But such a voluntary surrender of valuable business could not be satisfactory to *President* Howell, except on one of two theories. Either he was sacrificing the interests of one master to serve another, or there was some undisclosed compensation to his packet company—perhaps in the high rates that were charged on traffic between Bowling Green and Evansville. Certain it is that there was either a wanton sacrifice of the interests of the packet company through appellant's domination of its president, or else it was believed that the interests of both companies would be best served by an understanding as to local rates. In either event, appellant participated in the suppression of water competition at Bowling Green.

4. There is still other evidence. This is found in the manner in which Bowling Green got put on the Louisville & Nashville map as a competitive point, even to a limited extent, so as to enjoy

lower rates than points intermediate between it and Nashville. This was not brought about by real competition with the packet company under the management of appellant's division freight agent. There was no danger to rail rates as long as that freight agent controlled traffic on the river. The control was as common as if there had been common ownership. But a time came, in 1901, when the smooth working of this common control was threatened with real competition. The potential competition of Bowling Green's river was about to be utilized. A boat was put on to contest with the packet company the control of river traffic. The appellant and its agent's packet company were not content to let this new competition have the same influence on rail rates that similar competition had at Nashville. Instead, they set about exterminating it. Whether or not it is established, as stated by a stockholder of the packet company and not denied by anybody, that appellant guaranteed the packet company against loss, it is a fact that both cut their rates ruthlessly until the new boat was put out of business. To finally accomplish this, the packet company adopted the rates which had been in effect on the independent boat, and the rail rates were adjusted to these, and the two companies have continued as harmonious as ever under their common control.

A bare recital of these facts, we think, is all that is necessary to show conclusively that but for the control by appellant, through its agent, of the

packet company there would be the same real water competition at Bowling Green that exists at Nashville, and that it would have had the same compelling influence on rates.

IX.

A carrier can not set up as a reason for charging lower rates at one place than at another the fact of water competition at the former, when the same competition would exist at both but for the fact that such carrier has suppressed it at the latter.

As repeatedly said by this court, the primary object of sections 3 and 4 of the act to regulate commerce is to prevent unjust discrimination. Section 4 makes the long-and-short-haul clause the rule of general application to that end. But Congress recognized that the universal application of this rule would, in some instances, itself result in unjust discrimination by depriving competitive points of the rightful advantage growing out of competition. It, therefore, provided a method for suspending the rule in "special cases." Obviously, the rates applied in these special cases must be such as will not discriminate between points similarly situated and, at the same time, not discriminate against competitive points by denying them the advantages that naturally come from competition. These are the questions that must be determined before the commission can authorize the rule to be suspended. The question then

is, what character of competition, at a city situated like Bowling Green, will prevent the making of such a " special case " in favor of a city situated like Nashville as will justify suspending the rule as applied to the two cities. This is, in effect, the question considered in *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.,* 190 U. S., 273, 282, et seq. There, it was insisted that LaGrange was entitled to the same rates as Atlanta, because various carriers might, by combining, establish a route, through Macon, to LaGrange which would give it competitive conditions equivalent to those existing at Atlanta. The contention, however, was rejected by this court, the present Chief Justice saying:

> * * * To adopt it would amount to this: That the substantial dissimilarity of circumstances and conditions provided by the act to regulate commerce would depend, not as has been repeatedly held, upon a real and substantial competition at a particular point affecting rates, but upon the mere possibility of the arising of such competition. This would destroy the whole effect of the act and cause every case where competition was involved to depend, not upon the fact of its existence as affecting rates, but upon the possibility of its arising. What the fourth section of the act to regulate commerce has reference to is an actual dissimilarity of circumstances and conditions, not a conjectural one. (Pp. 282–283.)

It is by no means certain that even this situation might not now be reached under the power conferred on the commission by the amendment of 1910 to require the establishment of through routes. If the route to LaGrange via Atlanta was unreasonably long as compared with a practicable route via Macon, the latter route could be established, and this might result in equalizing competitive conditions at the two places. But in making the above ruling it was also said:

> * * * Of course, if by agreements or combination among carriers it were found that at a particular point rates were unduly influenced by a suppression of competition, that fact would be proper to consider in determining the question of undue discrimination and the reasonableness *per se* of the rates at such possible competitive points. (P. 283.)

In other words, a point can not be treated as a competitive point if no competition actually exists, although there are conditions which would make competition possible, unless it further appears that the carriers, by agreements or combinations, have suppressed competition that would otherwise have existed. A carrier finding at a given point the means of effective competition can not, through an understanding with those who control such means, stifle all competition and then treat such point as noncompetitive. Bowling Green must be treated as a competitive point to the extent that

the stifled competition would have controlled rates. And this is all that need be decided to sustain the order of the commission.

What appellant sought was authority to continue in force lower rates to Nashville than to Bowling Green. If it be said that, assuming that appellant has suppressed water competition at Bowling Green, the question as to whether this competition, if not suppressed, would have been as compelling as that at Nashville is more or less speculative, the answer is that this is a matter as to which the burden was on appellant. After showing the compelling force of water competition at Nashville, a part of its case was to show how compelling in comparison was similar competition at Bowling Green. If its act of suppression has made it impossible to produce satisfactory evidence on this point, its case fails, and it is not in a position to ask relief.

X.

Rail competition.

As we have seen, the Nashville rates were compelled by water competition. Rail competition had no controlling effect in making them. They were forced not on appellant alone but on *all* the railroads entering Nashville. And it fairly appears that all would gladly raise them but for the restraining influence of river competition. It is, therefore, immaterial to the present issue how many railroads reach Nashville.

35

The mere fact that there are railroads which may compete does not justify a departure from the long-and-short-haul clause. Nor will the fact that actual competition exists necessarily suffice. The rule has been thus stated by this court, quoting from the opinion in the *Alabama Midland Case*, 168 U. S. 144, 167:

> In order further to guard against any misapprehension of the scope of our decision, it may be well to observe that *we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections*, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of "undue or unreasonable preference or advantage," or what are "substantially similar circumstances and conditions." The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the commission or the courts from taking that matter into consideration. (*East Tenn., etc., Ry. Co.* v. *Interstate Commerce Commission*, 181 U. S. 1, 15–16.) (Italics ours.)

In other words, proof that there are competing railroads at a given point is of no force unless it

is further shown that the competition between them has actually depressed rates to the level of those sought to be justified. And when, as we have seen, the rates were fixed and forced upon all the railroads by water competition, and when all the railroads would be ready to raise the rates but for the deterring influence of water competition, it can not possibly be said that rail competition has had any compelling influence in making the rates in question.

But if there was no question of water competition in the case, no compelling rail competition at Nashville has been shown. True, there are three railroads entering Nashville. And there is testimony in a general way that they are all competitors for business. When the rates now sought to be continued were established, however, there were but two, appellant and the Nashville, Chattanooga & St. Louis. The Tennessee Central has since been built, but appellant's own witness admits that it has exerted no influence on rates, which have remained unchanged. If, therefore, rail competition has compelled these rates, it has necessarily been competition between appellant and the Nashville, Chattanooga & St. Louis. But appellant owns, and has all along owned, a majority of the stock of the Nashville, Chattanooga & St. Louis, and therefore has the power to control its policy. Appellant can scarcely expect even the most credulous to believe that, armed with the

power to prevent, it would permit competition keen enough to depress rates below the point where they are fairly remunerative. Under such circumstances there can be no real or compelling competition. *Northern Securities Case*, 193 U. S. 197.

The relation of this ownership by appellant of a controlling interest in the Nashville, Chattanooga & St. Louis to the alleged competitive rates to and from Nashville has had consideration by the courts before. In *Interstate Commerce Commission* v. *East Tenn., V. & G. Ry. Co.*, 85 Fed. 107, 116, Circuit Judge Severens considered it, and, speaking of appellant and its traffic at Nashville, said:

> * * * It really has no competition there unless it be from the navigation of the Cumberland River.

The same case was heard in the Circuit Court of Appeals for the Sixth Circuit, before Justice Harlan and Judges Lurton and Taft, and that court said:

> We know that it is stipulated in the record that the officers of the Nashville, Chattanooga & St. Louis Railway Company would testify that it competes with the Louisville & Nashville Railroad Company, and that they are under different managements; but such evidence must be weighed in the light of the history of railroads in this country, and the motives that ordinarily

> govern in railroad management. One railroad company acquires the controlling interest in another company to control its general policy, and, while it may permit independence in the personnel and the details of management, it needs more than a stipulated statement of this general nature to induce a belief that the company which elects the directors of the other will permit that other to take a course materially detrimental to the interests of the owning company. (99 Fed. 52, 63.)

It is true that this court reversed the decree in that case for other reasons, but, in doing so, it said nothing in conflict with what we have quoted. The language quoted on page 66 of the brief for appellant was used by the court in enumerating certain issues pressed upon the court which had been by the commission excluded from consideration and which, it was held, could not then be determined by the court.

The contention there made was the reverse of that which we now make. It was insisted that if the Louisville & Nashville had made a low rate to Nashville over its own lines, the Nashville, Chattanooga & St. Louis could not, in connection with carriers, justify a departure from the long-and-short-haul clause in order to meet those rates, because the Louisville & Nashville has the power to control the Nashville, Chattanooga & St. Louis. It was held, however, that it could, because if it was not permitted to do so all the traffic to Nashville

would move over the lines of the Louisville & Nashville. This would be true, if for no other reason, because of the Louisville & Nashville's power over the Nashville, Chattanooga & St. Louis. The long-and-short-haul clause could be complied with either by raising rates at Nashville or lowering them at Chattanooga. The Louisville & Nashville, with its ownership and control of the Nashville, Chattanooga & St. Louis, would dominate the situation. Its interest would be to require the Nashville, Chattanooga & St. Louis to raise rates at Nashville and thus divert a larger measure of traffic to its own lines. But, here, its interest would be to prevent its subsidiary company from reducing rates below such as are satisfactory to it. It might require that company to raise rates and thus drive more business to its own lines. But it certainly would never permit that company to force it to lower rates.

It would, we submit, be a parody on justice and common sense to say that competition between one company and a second company owned and completely in the power of the first is competition worthy of consideration in connection with relief from the long-and-short-haul clause.

XI.

Rates on oranges from Jacksonville to Louisville.

On the hearing before the commission the only circumstance urged by the appellant as making a special case was alleged competition at Louis-

ville with California and imported oranges. (R., p. 145.) This is no longer insisted on. The only thing now urged as making a special case is the fact that there are two routes of about the same length over which this traffic may move. But this falls far short of making a case. There is no claim that there is the slightest evidence to the effect that the rate sought to be continued was forced upon appellant or, in any measure, compelled by competition between the two routes. It does not appear whether the rate was fixed by appellant and met by its competitor, or whether the reverse was the case. In the absence of evidence that this competition had, in fact, exerted a compelling influence the application was properly denied.

XII.

CONCLUSION.

It is respectfully submitted that there is no error in the decree, and it should be affirmed.

WILLIAM L. FRIERSON,
Assistant Attorney General.
ALEX. KOPLIN,
Attorney.

NOVEMBER, 1917.

○

Office Supreme Court, U. S.
FILED
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JAMES D. MAHER,
CLERK.

No. 91.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
APPELLANT,
v.
THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

JOSEPH W. FOLK,
Counsel for the Interstate Commerce Commission.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1917

SYNOPSIS AND INDEX.

	Page.
STATEMENT OF THE CASE	1
PROCEEDINGS BEFORE THE COMMISSION	1–8
PROCEEDINGS IN THE COURTS	8–9
THE ISSUES	9
ARGUMENT	10–37
I. The Commission has jurisdiction to prescribe the extent to which carriers may be relieved from the operation of the fourth section	10
II. The Commission has power to dispose of a part of an application for relief from the fourth section without disposing of the entire application	15
III. The order complained of is a denial of relief under the fourth section	16
IV. The Commission's order is not based upon the theory of estoppel	18
V. The order is supported by substantial evidence	19
(*a*) Lower rates to more distant points can not be justified on theory that it is necessary to suppress water competition	19
(*b*) If rates to Nashville are reasonable, the same rates to Bowling Green, a shorter distance, are reasonable	22
(*c*) Rail competition at Nashville is not controlling	22
(*d*) The mere fact that the volume of traffic at Nashville is greater than that at Bowling Green does not entitle Nashville to lower rates than Bowling Green	25
(*e*) Market competition at Nashville as compared with that at Bowling Green does not entitle appellant to charge lower rates to and from Nashville than to and from Bowling Green	26
(*f*) Appellant's application for relief from the fourth section as to rates on oranges from Jacksonville, Fla., was properly denied	27
(*g*) Evidence before Commission abundantly sustains order	28
(*h*) The order, being based upon substantial evidence, is conclusive	32
VI. The order does not deprive appellant of property without due process of law or violate the fifth amendment to the Constitution of the United States	33
VII. The district court did not err in excluding evidence offered by appellant	34
CONCLUSION	38

TABLE OF CASES.

Page.

Atchison, T. & S. F. Ry. Co. v. *United States*, 232 U. S. 199..... 32
Bowling Green Business Men's Protective Association v. *Louisville & N. R. Co. et al.*, 24 I. C. C. 228..... 3, 4, 19, 21, 24, 25
Chamber of Commerce of Chattanooga v. *Southern Ry. Co.*, 10 I. C. C. 111..... 22
East Tennessee, V. & G. Ry. Co. v. *Int. Com. Com.*, 181 U. S. 1.... 12, 24
East Tennessee, V. & G. Ry. Co. v. *Int. Com. Com.*, 99 Fed. 52..... 23
Edwards & Bradford Lumber Co. v. *Chicago, B. & Q. R. Co.*, 25 I. C. C. 93..... 28
Hurtado v. *California*, 110 U. S. 516..... 33
Illinois Central R. Co. v. *Int. Com. Com.*, 206 U. S. 441..... 32
Intermountain Rate Cases, 234 U. S. 476..... 8, 11, 12, 13, 14, 33, 35
Int. Com. Com. v. *Alabama Midland Ry. Co.*, 168 U. S. 144..... 12
Int. Com. Com. v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88..... 14
Int. Com. Com. v. *East Tennessee, V. & G. Ry. Co.*, 85 Fed. 107..... 23
Int. Com. Com. v. *Louisville & N. R. Co.*, 190 U. S. 273..... 31
Int. Com. Com. v. *Louisville & N. R. Co.*, 227 U. S. 88..... 28, 34
Int. Com. Com. v. *Union Pacific R. Co.*, 222 U. S. 541..... 28, 32
In the Matter of Applications for Relief from the Operation of the Fourth Section in Regard to Certain Rates on Salt, 24 I. C. C. 192.. 25
Louisville & N. R. Co. v. *Behlmer*, 175 U. S. 648..... 12
Louisville & N. R. Co. v. *Kentucky*, 183 U. S. 503..... 11, 33
Louisville & N. R. Co. v. *United States*, 207 Fed. 591..... 8
Louisville & N. R. Co. v. *United States*, 225 Fed. 571... 8, 12, 18, 19, 20, 37
Minnesota Rate Cases, The, 230 U. S. 352..... 32, 34
O'Keefe, Receiver, New Orleans, T. & M. R. Co. v. *United States*, 240 U. S. 294..... 28
Procter & Gamble v. *United States*, 225 U. S. 282..... 32
Railroad Commission of Nevada v. *Southern Pacific Co.*, 21 I. C. C. 329..... 12
Southern Pacific Co. v. *Int. Com. Com.*, 200 U. S. 536..... 17
Suffern Grain Co. v. *Illinois Central R. Co.*, 22 I. C. C. 178..... 25
Texarkana Freight Bureau v. *St. Louis, I. M. & S. Ry. Co.*, 28 I. C. C. 569..... 21
Texas & Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U. S. 426.... 32
Texas & Pacific Ry. Co. v. *Int. Com. Com.*, 162 U. S. 197..... 14
Traffic Bureau of the Sioux City Commercial Club v. *Chicago & N. W. Ry. Co.*, 22 I. C. C. 110..... 25
Twining v. *New Jersey*, 211 U. S. 78..... 33
United States v. *Louisville & N. R. Co.*, 235 U. S. 314..... 15, 17, 29, 32
United States v. *Merchants, etc., Association*, 242 U. S. 178.... 13, 15, 32, 35

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, appellant,
v.
THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, appellees.
} No. 91.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

STATEMENT OF THE CASE.

This is an appeal by the Louisville & Nashville Railroad Company, hereinafter called the appellant, from a decree of the District Court for the Western District of Kentucky, dismissing a bill by appellant to enjoin and set aside an order of the Interstate Commerce Commission, hereinafter called the Commission, which order denied to appellant certain relief from the fourth section of the Act to regulate commerce. The opinion of the district court is reported in 225 Fed. 571.

PROCEEDINGS BEFORE THE COMMISSION.

On December 17, 1910, appellant had filed an application before the Commission asking for relief from the fourth section of the Act to regulate commerce.

This application covered freight rates throughout appellant's entire system and related to many hundred places. The application was designated "Fourth Section Application No. 1952." In this application appellant asked authority to continue to charge less rates on traffic through Bowling Green to and from Nashville and Louisville than were contemporaneously charged on like traffic to and from Bowling Green.

On August 8, 1911, the Bowling Green Business Men's Protective Association filed a complaint before the Commission against appellant and other carriers, alleging that the rates to and from Bowling Green were unreasonable, in violation of section 1, were unduly prejudicial to Bowling Green and unduly preferential to Nashville and Clarksville, Tenn., and Louisville, in violation of section 3, and also constituting in many instances, it was alleged, violations of the fourth section of the Act. This complaint was numbered 4310.

Appellant filed an answer to the complaint in No. 4310, in which it set up as a defense that part of its Fourth Section Application No. 1952 which applied to the places in question. Appellant thus made its fourth section application a part of the case arising out of the complaint filed by the Bowling Green Association. Facts as to the comparative competitive conditions at Bowling Green and the other cities mentioned were necessarily involved in both proceedings, and the same facts were essential to a proper consideration of the two cases. The Com-

mission, with the consent of appellant, consolidated the two cases as to the particular places under consideration.

Hearings were held at which a great deal of testimony was introduced as to the competitive conditions at the points named. At all of these hearings appellant was present by counsel who took an active part in the proceedings. The Commission, in its report, said, 24 I. C. C. 228, 231:

> The question of primary concern, therefore, is whether the facts developed in this proceeding are such as to justify the Commission in relieving the defendants from the operation of the long-and-short-haul clause of the law so far as the rates to and from Bowling Green are concerned.

It appeared from the evidence, and the Commission so found in its report, that Bowling Green was on appellant's main line between Louisville and Nashville; that there was water competition at Nashville which had a controlling influence on rail rates at Nashville; that this water competition was not active but potential, ready to come into play if rail rates were raised to the extent of making water transportation profitable; that there was a water route also to Bowling Green, the potential competition of which was equal to, if not greater than, the water competition at Nashville; that although there were other railroads at Nashville and no railroad other than appellant at Bowling Green, the competition of these railroads at

Nashville was not controlling; that competition was not such as to justify charging a lower rate to Nashville, the more distant point, than to Bowling Green, the less distant point; that on oranges from Jacksonville to Louisville through Bowling Green the competitive conditions at Louisville were not such as to justify a lower charge to Louisville than to Bowling Green; and that on sugar from New Orleans through Bowling Green to Louisville the competitive conditions at Louisville did justify the charging of a lower rate to Louisville than to Bowling Green.

June 4, 1912, the Commission filed its report, 24 I. C. C. 228, and on the same day entered an order. The report and the order are entitled "No. 4310," giving the parties, and "Fourth Section Application No. 1952." After stating the contentions of the complaint in No. 4310, the Commission, in its report, said:

> By Fourth Section Application No. 1952, * * * the defendant, Louisville & Nashville Railroad, for itself and its connections, seeks authority to continue to charge lower rates to and from Louisville, Clarksville, and Nashville than to and from Bowling Green. While the application seeks similar authority with respect to many other points, only this portion of it will be considered in the present proceeding and no opinion with respect to points other than Bowling Green will be expressed herein. (Record, p. 134).

Following the order of June 4, 1912, appellant filed a petition for a rehearing. On October 8, 1912, the Commission denied its petition for rehearing, but at the same time amended its order, making it entirely a fourth section order, entitled "In the matter of the application No. 1952 of the Louisville & Nashville Railroad Company for relief from the provisions of the fourth section of the Act to regulate commerce." That order in prescribing the extent of relief denied certain parts of appellant's application, granted another part of the application, and left still other parts of the application undisposed of.

The Commission ordered, in pursuance of its finding of facts, that the application of the carrier for relief from the fourth section, to the extent that it sought permission to charge lower rates on traffic to and from Nashville through Bowling Green than it charged to and from Bowling Green, be denied, and that the same application be denied to the extent that it sought permission to charge lower rates on oranges from Jacksonville through Bowling Green to Louisville, than from Jacksonville to Bowling Green. The Commission further ordered that the same application be granted to the extent that it sought permission to charge lower rates on sugar from New Orleans, through Bowling Green to Louisville, than from New Orleans to Bowling Green.

The Commission's order of October 8, 1912, which is now under consideration, is as follows (Record, pp. 167–168):

> At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 8th Day of October, A. D. 1912.
>
> FOURTH SECTION ORDER NO. 1361.
>
> In the Matter of That Portion of Application No. 1952 of the Louisville & Nashville Railroad Company, by A. R. Smith, Its Third Vice-President, for Itself and on Behalf of Its Connections, for Relief from the Provisions of the Fourth Section of the Act to Regulate Commerce, as Amended June 18, 1910, Respecting Class and Commodity Rates.
>
> CLASS AND COMMODITY RATES.
>
> Upon further consideration of the record in the above entitled case:
>
> *It is ordered*, That the order heretofore entered on June 4, 1912, in said case be, and the same is, hereby amended to read as follows:
>
> This application, No. 1952, filed December 17, 1910, asks, among other things, for authority to continue to charge lower rates to and from Louisville, Ky., Clarksville, and Nashville, Tenn., than are concurrently in effect on like traffic to and from Bowling Green, Ky. A hearing having been held upon this application, in so far as it relates to rates on freight traffic to and from the points hereinbefore described, and full investigation of

the matters and things involved therein having been had, and the Commission having, on the 4th day of June, 1912, made and filed a report containing its findings of fact and conclusions thereon, which said report is herein referred to and made a part hereof.

It is ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on traffic through Bowling Green, Ky., to and from Nashville, Tenn., than are contemporaneously in effect on like traffic to and from Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

It is further ordered, That that portion of said application, No. 1952, which seeks authority to continue to charge lower rates on oranges from Jacksonville, Fla., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, Ky., be, and the same is hereby, denied, effective December 1, 1912.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to continue to charge lower rates on sugar from New Orleans, La., through Bowling Green, Ky., to Louisville, Ky., than are contemporaneously in effect on like traffic to Bowling Green, provided that the present rates to Bowling Green are not exceeded.

The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any other provision of the Act.

PROCEEDINGS IN THE COURTS.

We quote from the opinion of the district court, 225 Fed. 571, 574:

> On the day immediately preceding the entry of the latter orders the plaintiff (appellant), without awaiting the result of its petition for a rehearing, commenced this action in equity in the Commerce Court against the United States as respondent, and in which the Interstate Commerce Commission subsequently intervened, seeking to enjoin the enforcement of the Commission's orders of June 4, 1912. On November 11, 1912, the plaintiff filed a supplemental petition, showing that the orders of June 4th had been vacated; that its petition for a rehearing had been overruled, and that the Commission had, on October 8th, made the orders in the fourth section application case, which are copied above.

Upon final hearing, the Commerce Court dismissed the petition upon the ground that the order denying relief from the fourth section was a negative order and could not, therefore, be reviewed by the courts. *Louisville & N. R. Co.* v. *United States*, 207 Fed. 591. The petitioner appealed to this Court, and, pending the appeal, the *Intermountain Rate Cases*, 234 U. S. 476, were decided, holding that an order denying relief from the fourth section may be reviewed by the courts, and thereupon the judgment of the Commerce Court was reversed pursuant to stipulation, and the case remanded to the District

Court of the United States for the Western District of Kentucky for a hearing upon the merits.

The district court thereupon proceeded to a hearing upon the record before the Commission, its report, and upon certain additional testimony taken before the Commerce Court, which was, we submit, erroneously admitted, and entered its decree denying the relief sought and dismissing the petition. The case is here by appeal from this decree.

THE ISSUES.

Appellant has filed 38 assignments of error. Disregarding repetitions, the errors assigned may be stated as follows:

The court erred in sustaining the order of the Commission because (1) the order is beyond the power of the Commission; (2) the order is broader than the hearings before the Commission; (3) the order is under the third section of the Act, and not a denial of relief under the fourth section; (4) the order is based upon the theory of estoppel; (5) the order is not supported by substantial evidence; (6) the order deprives appellant of property without due process of law, in violation of the Federal Constitution; and (7) the district court erred in excluding evidence offered by appellant.

ARGUMENT.

I.

THE COMMISSION HAS JURISDICTION TO PRESCRIBE THE EXTENT TO WHICH CARRIERS MAY BE RELIEVED FROM THE OPERATION OF THE FOURTH SECTION.

Section 4 of the Act to regulate commerce, as amended June 18, 1910, provides that carriers subject to the Act may not charge or receive more in the aggregate for a shorter than for a longer haul over the same line and in the same direction where the shorter is included within the longer distance. It provides further, however:

> That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and *the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section:* * * * . [Italics ours.]

Prior to the amendment of 1910, carriers were permitted to initiate without authority of the Commission higher rates for shorter than for longer distances. By that amendment, however, the consent of the Commission was made a condition precedent to the lawfulness of charging such higher rates.

Congress has made it unlawful generally for a carrier to charge more for a shorter than for a longer

distance in the same direction, the shorter being included within the longer distance. The enforcement of such a policy is a valid exercise of the legislative power. *Intermountain Rate Cases*, 234 U. S. 476. There this Court, through Mr. Chief Justice White, said, pages 488–489:

> It is conceded in the argument that it has been directly decided by this Court that a general enforcement of the long and short haul clause would not be repugnant to the Constitution (*Louisville & N. R. Co.* v. *Kentucky*, 183 U. S. 503), but we are asked to reconsider and overrule the case and thus correct the error which was manifested in deciding it. But we are not in the remotest degree inclined to enter into this inquiry, not only because of the reasons which were stated in the case itself but also because of those already expounded in this opinion and for an additional reason which is that the contention by necessary implication assails the numerous cases which from the enactment of the Act to regulate commerce down to the present time have involved the adequacy of the conditions advanced by carriers for justifying their departure from the long-and-short-haul clause.

The carrier may apply to the Commission and if it shows exceptional circumstances for so doing, the Commission "may in special cases, after investigation," prescribe relief to the carrier from the operation of the fourth section to the extent to which the Commission finds that such relief should be granted.

Competition at the more distant point which does not exist at the less distant point might be sufficient to justify the Commission in granting relief from the rule of the fourth section. Such competition, however, must be compelling and not within the control of the carrier making the discrimination. *Intermountain Rate Cases*, 234 U. S. 476; *Int. Com. Com.* v. *Alabama Midland Ry. Co.*, 168 U. S. 144; *Louisville & N. R. Co.* v. *Behlmer*, 175 U. S. 648; and *East Tennessee, V. & G. Ry. Co.* v. *Int. Com. Com.*, 181 U. S. 1.

The district court in this case said, 225 Fed. pages 571, 581:

> Such relief could be granted only upon a showing of facts which would constitute a special case within the meaning of the proviso of that section. This plainly cast upon the plaintiff the burden of proof; for the effect of granting the application would necessarily operate to create an exception to the express inhibition of the statute. As the Commission said in *Railroad Commission of Nevada* v. *S. P. Co.*, 21 I. C. C. 329, 341:
>
> "(3) That it must be affirmatively shown by the carriers seeking such exception that injustice will not be done to intermediate points by allowing lower rates at the more distant points.
>
> "(4) That the intendment of the law is to make its prohibition of the higher rate for the shorter haul a rule of well-nigh universal application, from which this Commission may deviate only in special cases, and then to

> meet transportation circumstances which are beyond the carriers' control; that is to say, a carrier shall not prefer the more distant point by giving it the lower rate because of any policy of its own initiation, but if at the more distant point it finds a condition to which it must conform under the imperious law of competition if it would participate in traffic to that point, it may discriminate against the intermediate point without violating the law, provided it establishes such necessity before the Commission."

In *Intermountain Rate Cases, supra*, it is pointed out, page 485, that, under section 4, it is the right of carriers to seek and obtain under authorized circumstances the sanction of the Commission to charge a lower rate for a longer than for a shorter haul.

In *United States* v. *Merchants, etc., Association*, 242 U. S. 178, at page 188, this Court, through Mr. Justice Brandeis, said:

> For the order is permissive merely. The carrier is the only necessary party to the proceeding under section 4. The Commission represents the public.

By the amendment of 1910, "primary judgment" was transferred from the carrier to the Commission. Obviously, the intention of Congress, by this amendment, was that a body charged with enforcing a public duty, should, in the first instance, determine whether the facts justify an exception to the general rule of section 4. *Intermountain Rate Cases, supra.*

As showing that the powers conferred upon the carrier by the original fourth section were of a public nature and that the power conferred upon the Commission by the amendment requires a consideration of great public interests and not merely of the private interests of the carrier, this Court in the *Intermountain Rate Cases, supra*, cited with approval the case of *Texas & Pacific Ry. Co.* v. *Int. Com. Com.*, 162 U. S. 197, 219. In that case this Court said, page 219:

> The very terms of the statute, that charges must be *reasonable*, that discrimination must not be *unjust*, and that preference or advantage to any particular person, firm, corporation or locality must not be *undue* or *unreasonable*, necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers, and consumers, should be considered by a tribunal appointed to carry into effect and enforce the provisions of the Act.

In *Int. Com. Com.* v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88, 103, this Court said:

> The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country.

II.

THE COMMISSION HAS POWER TO DISPOSE OF A PART OF AN APPLICATION FOR RELIEF FROM THE FOURTH SECTION WITHOUT DISPOSING OF THE ENTIRE APPLICATION.

Appellant filed with the Commission what may be called a blanket application, in which appellant prayed for relief from the operation of the fourth section for upward of seven hundred points, including Bowling Green, Nashville, and Louisville. It is contended that the Commission had no power to dispose of part of the application without disposition as to all the points named in the application. A similar contention was made in *United States* v. *Merchants', etc., Association*, 242 U. S. 178, 186–187. In that case, this Court said:

> In other words, the Commission granted a part of the relief asked. The district court says it had no power so to do. But there is nothing in the Act to justify limiting the power of the Commission to either a grant or a denial *in toto* of the precise relief applied for. Such a construction would make section 4 unworkable and defeat the purpose of the amendment. It is at variance with the broad discretion vested in the Commission and the prevailing practice of administrative bodies. * * * It is inconsistent with the *Intermountain Rate Cases*, 234 U. S. 476, where the order sustained granted relief very different from that applied for; and it finds no support in *United States* v. *Louisville & Nashville Railroad*, 235 U. S. 314, 322, cited by the district court, in which case relief from the operation of the fourth section had not been granted.

Appellant applied for relief from the fourth section with reference to Bowling Green, Nashville, Louisville and some 700 other points. Evidence was introduced with reference to competitive conditions at Bowling Green, Nashville, Louisville, Clarksville, Jacksonville, and New Orleans. The order of October 8, 1912, pertained to Bowling Green, Nashville, Louisville, Jacksonville, and New Orleans. It is somewhat difficult, in the light of the facts, to understand appellant's contention that the order goes beyond the issues and the evidence.

The Commission, instead of entering an order broader than the evidence heard, in fact did the contrary. It entered no order as to Clarksville and no order as to many commodities at other places concerning which evidence was heard.

III.

THE ORDER COMPLAINED OF IS A DENIAL OF RELIEF UNDER THE FOURTH SECTION.

Appellant contends that the order entered by the Commission was affirmative rather than negative, and was based on the third section of the Act rather than the fourth section. Aside from the fact that there might be a difference in the burden of proof before the Commission, we do not see that it makes any difference whether the order was affirmative or negative, based on third section or fourth section. If the order was a proper order, based upon any law which the Commission might administer, it should

be sustained. *Southern Pacific Co.* v. *Int. Com. Com.*, 200 U. S. 536, 556, 557. In *United States* v. *Louisville & N. R. Co.*, 235 U. S. 314, the proceeding before the Commission in the case cited was based on section 3. This Court sustained the order upon the authority of section 4.

The order here mentioned is a fourth section order. There was pending before the Commission a fourth section application by appellant. The mere fact that the result of the denial of the relief sought by appellant would require appellant to obey the third section of the Act and remove discrimination against Bowling Green makes it none the less a fourth section order. It is true, of course, that there was a complaint pending which charged, among other things, a violation of section 3 of the Act, and certainly it was within the Commission's discretion to make the order in either case and in any form it saw fit.

It is true, also, that the first order entered by the Commission in regard to these matters pertained both to the Bowling Green complaint and appellant's application. On October 8, 1912, however, the order was amended by striking out all reference to the Bowling Green complaint and making it entirely an order on appellant's application No. 1952, for relief from the fourth section. Appellant complains of this action of the Commission. The order of June 4, 1912, however, had not gone into effect. Appellant had not been required to act upon it and had not acted, and certainly had not been injured by it. The

matter was still in the hands of the Commission, and the Commission has full power to amend its own orders. The district court said, 225 Fed. 571, 575:

> Certainly no decision which became effective upon the Protective Association's (Bowling Green) complaint was rendered, and no injury, in the legal sense, had come to the plaintiff by anything done upon the complaint of the Protective Association.

IV.

THE COMMISSION'S ORDER IS NOT BASED UPON THE THEORY OF ESTOPPEL.

Appellant contends that the order of the Commission is based exclusively upon the theory of estoppel. We again quote from the district court in regard to this contention, 225 Fed. 571, 583:

> If we assume that the Commission has no power for that reason to decide a question coming before it, we nevertheless find nothing in the record, nor in the Commission's opinion, (24 Interst. Com. Com'n R. 228), which shows plaintiff's (appellant's) assertion to be well founded.

Appellant attempted to establish a difference in circumstances between Bowling Green and Nashville which would justify lower rates to Nashville. The Commission found that no such circumstances existed, and that the opportunity for water competition was not different. It did find that the competition was not actual at either place; at Nashville because appellant had so reduced its rates that water com-

petition was not active; at Bowling Green because appellant, through an arrangement with the boat line, succeeded in suppressing it and keeping it suppressed. The Commission said in its report, 24 I. C. C. 228, 237:

> The defendants' argument that it fairly meets the competition which exists at Bowling Green loses its force when we consider that such competition is purely artificial and that defendants' own action has removed the element of real competition which presumably otherwise would exist.

The order is not based on any matter of estoppel but on a finding of fact upon the evidence before the Commission. The "controlling" or "compelling" competition which appellant sought to establish was not established.

V.

THE ORDER IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

(a) Lower rates to more distant points can not be justified on theory that it is necessary to suppress water competition.

Appellant, as pointed out by the district court, makes two principal contentions: (1) That the order of the Commission is not such as it has power to make; and (2) That it is void "because contrary to the indisputable nature of the evidence and not supported by any evidence." 225 Fed. 580. As to the first contention, the district court said, 225 Fed. 571, 580:

> * * * it will be sufficient to say as to the first of these contentions that it is without merit because the Commission, by the

express terms of section 4, had power to grant or deny the authorization for which the plaintiff applied.

As to appellant's second contention that the Commission's order is "contrary to the indisputable nature of the evidence" and not supported by any evidence, the district court said, 225 Fed. page 580:

> * * * we confess some doubt as to what the plaintiff's counsel mean by the phrase "the indisputable nature of the evidence" as applicable to the record before us. As much of the evidence is of a nature that may be disputed, and as some of it certainly has been disputed, we suppose the phrase must be limited to such physical facts as pertain to the existence, the course and characteristics of the Cumberland, Green, and Barren Rivers, and the location upon one of Nashville, Tenn., and upon another of Bowling Green, Ky., and also to the physical facts that there are railroads other than plaintiff's operating at Nashville, though there is no other operating at Bowling Green. These incontestable facts appear, but, though most important, there is other evidence in the record to which the term "indisputable" is not applicable.

The Commission had under consideration an application of appellant to charge on all traffic to and from Nashville, through Bowling Green, and on oranges from Jacksonville to Louisville, through Bowling Green, lower rates than it contemporaneously charged on like traffic to Bowling Green.

The competitive conditions at Nashville and at Bowling Green became of importance in determining this matter.

Appellant contended that water competition on the Cumberland River at Nashville was compelling, and justified the difference in rate. The Commission found that such water competition at both cities was only potential, and the potential water competition at Bowling Green was as great as at Nashville, and, in addition, the actual water competition at Bowling Green had been suppressed by appellant itself.

The physical facts concerning the relative location and importance of Bowling Green and Nashville are stated at length by the Commission in its report, 24 I. C. C. 228, 230–231. (Record, pp. 131, 133 *et seq.*)

Appellant contends that it can not raise the Nashville rates because it will bring into existence water competition, and the Bowling Green rates, not having been found to be unreasonable, should not be reduced. In other words, appellant contends that it must have rates to Nashville low enough not merely to compete with water competition, but to *suppress* water competition. Such a contention was made before the Commission in *Texarkana Freight Bureau* v. *St. Louis, I. M. & S. Ry. Co.*, 28 I. C. C. 569, and on page 583, the Commission said:

> While carriers may properly meet water competition, the maintenance of a lower rate to one point than to other points which are intermediate can not be justified on the ground that it is necessary to suppress water competition.

(b) If rates to Nashville are reasonable, the same rates to Bowling Green, a shorter distance, are reasonable.

Appellant contends that the rates to and from Nashville through Bowling Green, that is, the longer distance, are reasonable. If so, it seems clear that the same rates to and from Bowling Green, the shorter distance, would be reasonable. If, then, appellant should choose to lower the Bowling Green rates rather than raise the Nashville rates, it would still receive a remunerative rate and not be deprived of its property in violation of the Constitution. Assuming both rates to be within the zone of reasonableness, appellant may charge the same rate for the longer distance as for the shorter if no undue prejudice or preference results therefrom, but it must show unusual circumstances to justify a lesser charge for the longer distance.

(c) Rail competition at Nashville is not controlling.

The only railroads other than that of appellant which reach Nashville are the Nashville, Chattanooga & St. Louis and the Tennessee Central. Appellant owns 71 per cent of the capital stock of the N., C. & St. L., and of course controls the policy of that road. As said by the Commission in *Chamber of Commerce of Chattanooga* v. *Southern Ry. Co. et al.*, 10 I.C.C. 111, 123, there is competition between appellant and the N., C. & St. L. for business, but that competition is at the "established rates," and if at any time the N., C. & St. L. should become troublesome as a competitor appellant "possesses the power to control or put an end to that competition."

In *Int. Com. Com.* v. *East Tennessee, V. & G. Ry. Co.*, 85 Fed. 107, 116, the United States Circuit Court for the Eastern District of Tennessee, by Judge Severens, said:

> But it appears that that company [L. & N. R. R.] owns and controls a majority of the stock of the Nashville, Chattanooga & St. Louis Railway Company, the respondent carrier which constitutes that part of the through lines which extends from Chattanooga to Nashville, and fixes the rates for that road. It is therefore in a position to insure to Nashville such concessions as to advance its favoring purpose with reference to that city. It really has no competition there unless it be from the navigation of the Cumberland River.

Upon appeal to the Circuit Court of Appeals for the Sixth Circuit, *East Tennessee, V. & G. Ry. Co.* v. *Int. Com. Com.*, 99 Fed. 52, 63, that court, by Judge Taft, Mr. Justice Harlan and Judge Lurton concurring, said:

> We know that it is stipulated in the record that the officers of the Nashville, Chattanooga & St. Louis Railway Company would testify that it competes with the Louisville & Nashville Railroad Company, and that they are under different managements; but such evidence must be weighed in the light of the history of railroads in this country, and the motives that ordinarily govern in railroad management. One railroad company acquires the controlling interest in another company to control its general policy; and, while it may permit

> independence in the personnel and the details of management, it needs more than a stipulated statement of this general nature to induce a belief that the company which elects the directors of the other will permit that other to take a course materially detrimental to the interests of the owning company.

Upon appeal to this Court, *East Tennessee, V. & G. Ry. Co.* v. *Int. Com. Com.*, 181 U. S. 1, this Court reversed the judgment of the Circuit Court of Appeals, but upon the ground that the facts as to the control of the N., C. & St. L. by appellant were not before the Commission, and the case was sent back in order that the Commission might pass upon the question, which it subsequently did in *Chamber of Commerce of Chattanooga* v. *Southern Ry. Co. et al., supra*, holding as the Circuit Court and the Circuit Court of Appeals had held.

It can not be said, therefore, that the Commission acted arbitrarily in this case in finding that the competition of the N., C. & St. L. at Nashville is not such as to depress appellant's rates.

The Commission, in its report, said, 24 I. C. C. 228, 239:

> We are convinced from our consideration of the facts developed in connection with defendants' claim of railroad competition at Nashville and Clarksville that this competition is not of such force and effect as to justify a lower scale of rates at these points than at Bowling Green on traffic the movement of which is through Bowling Green.

(d) The mere fact that the volume of traffic at Nashville is greater than that at Bowling Green does not entitle Nashville to lower rates than Bowling Green.

In Fourth Section Applications Nos. 1870, 2045, 2471, and 4218, 24 I. C. C. 192, 194, the Commission said:

> If a city is large and prosperous by virtue of natural advantages it may justly be given the benefit of its location, even though that may result in apparent discrimination against smaller intermediate points; but the mere fact that a market is important and a large consumer is not of itself this kind of a natural advantage. One important purpose of the Act to regulate commerce was to stop discrimination against the weak, whether individual or locality.

See also:

Traffic Bureau of the Sioux City Commercial Club v. *Chicago & N. W. Ry. Co.*, 22 I. C. C. 110, 114.

Suffern Grain Co. v. *Illinois Central R. Co.*, 22 I. C. C. 178, 182.

The mere fact that competition exists at the more distant point which does not exist at the less distant point is not sufficient to entitle the carrier to *demand* relief. Even though the carrier, when it was vested with the discretion as to whether or not it would publish a lower rate to the more distant point than to the intermediate point, might not have been guilty of an abuse of discretion in finding that the water competition at Nashville was substantially greater than the water competition at Bowling Green,

and therefore sufficient to entitle the carrier to charge lower rates for the longer haul to Nashville, it does not follow that the Commission was guilty of an abuse of discretion in finding that there was not such a substantial difference in the competition at the two places as to justify a lower rate for the haul to Nashville than for the shorter haul to Bowling Green. The transfer of discretion from the carrier to the Commission was intended to lessen the weight to be given to the selfish interest of the carrier. The field of discretion is a very wide one. When the carrier exercised the discretion, it naturally went to the boundary line in the direction of its own interest, and when the discretion was transferred to the Commission it was naturally expected that the Commission would, in many cases, in the exercise of that discretion, stop far short of the line to which self-interest had taken the carrier when it exercised the discretion.

(e) Market competition at Nashville as compared with that at Bowling Green does not entitle appellant to charge lower rates to and from Nashville than to and from Bowling Green.

Market competition may be one of many elements which enter into the determination by the Commission of what action it ought to take in the exercise of its discretion.

The Commission had before it evidence as to the respective market conditions at Nashville and at Bowling Green and decided that whatever difference might exist between the two was not such as to justify the relief sought by appellant.

(f) Appellant's application for relief from the fourth section as to rates on oranges from Jacksonville, Fla., was properly denied.

Appellant contends that because two railroads reach Louisville from Jacksonville, while only one railroad reaches Bowling Green from that point, there is such a dissimilarity of circumstances and conditions between the transportation of oranges to Louisville and the transportation of oranges to Bowling Green as to entitle appellant to charge lower rates to Louisville than to Bowling Green. This argument of appellant assumes that in every case in which two railroads compete for traffic the rates are unreasonably low without regard to whether or not the rates are what they were when there was only one railroad which could handle the traffic. For the purpose of the argument we may assume that the rates on oranges from Jacksonvile to Louisville were made by appellant and were purely voluntary rates and that later the Southern Railway, having entered the field, met the rates of appellant.

Prior to the time the Southern Railway became a competitor for the traffic, appellant had no right to relief from the fourth section, but appellant insists that the mere fact that the Southern Railway now competes for the traffic entitles appellant to relief from the fourth section as to Bowling Green, although there may have been no change whatever in the rates to Louisville. The ground upon which the contention is based is that if appellant should increase its rates to Louisville the traffic might go to the Southern. Surely a rate which is reasonable does not become un-

reasonably low merely because a competitor meets the rate. *Edwards & Bradford Lumber Co.* v. *Chicago, B. & Q. R. Co.*, 25 I. C. C. 93, 94.

(g) Evidence before Commission abundantly sustains order.

In *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 549, 550, this Court, speaking through Mr. Justice Lamar, summarized the evidence that may be regarded as "substantial evidence," and said:

> With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's finding on such facts conclusive.

A further definition is given in *Interstate Commerce Commission* v. *Louisville & Nashville R.*, 227 U. S. 88, 96, and in *O'Keefe, Receiver of New Orleans T. & M. R. Co.* v. *United States et al.*, 240 U. S. 294, 303.

While the question of competition is involved, and the substantial facts—water and rail competition—are undisputed, it is still for the Commission to determine whether such competition justifies relief

from the fourth section. *United States* v. *L. & N. R. Co.*, 235 U. S. 314, 320.

The established rates to and from Bowling Green at the time the order was made were, in some cases almost twice the rates on the same commodities for longer hauls to and from Clarksville and Nashville. A comparison of the rates is set forth in the report of the Commission. (Record, p. 134.) The fact that preferential rates were given to Clarksville and Nashville was not denied; on the contrary, published rates referred to in evidence show the fact beyond any possible controversy.

To meet this, appellant claims that as there is water competition on the Cumberland River at Nashville, Clarksville, Louisville, and Evansville, it is, as a matter of right, entitled to charge lower rates at those points. In other words, that as Bowling Green is not on the Cumberland River, this gives the appellant the right to give preferential rates to Cumberland River points. There is also rail competition at the points named. This argument might be persuasive if Bowling Green had no corresponding competition; but Bowling Green is a competitive point. It is at the head of navigation on the Barren River, which empties into the Green River, the Green River emptying into the Ohio near Evansville. These rivers have been improved by the Federal Government and are navigable during the entire year. Evidence was submitted showing the amount of traffic carried and also comparisons as to

the potential water competition at Bowling Green, Clarksville, Nashville, and other points. There can be no controversy regarding the fundamental facts. The rivers are there, and the navigability of the rivers is admitted. The only controversy is over the amount and the potentiality of the competition at the different points. That being the case, under the decisions of this Court, it is for the Commission to determine whether or not the competition at Clarksville and Nashville and other points is of a character so different from the competition at Bowling Green as to justify relief at those points. The Commission decided upon these facts, weighed the testimony as to the amount of business carried on in the different cities, and held that no preferential rates should be permitted. It therefore denied the application for relief under the fourth section as to Bowling Green. The testimony of W. C. Sumpter (Record, pp. 184–216), Samuel Cristal (Record, pp. 216–224), R. C. Duncan (Record, pp. 225–237), A. S. Hindes (Record, pp. 237–242), B. G. Davidson (Record, pp. 242–253), M. H. Crump (Record, pp. 254–266), R. W. Smith (Record, pp. 266–268), H. D. Graham (Record, pp. 268–279), and E. A. Greer (Record, pp. 280–292) substantial evidence in support of the Commission's findings and order. This is not all the evidence. The physical situation, as graphically shown upon the map submitted by appellant, and the Government statistics referred to in the evidence showing the traffic upon

the rivers, have a decided bearing in determining whether relief should be accorded Clarksville and Nashville as against Bowling Green.

The district court, referring to the application for relief under the fourth section, said (Record, p. 17):

> Examination of the record shows that substantial evidence was presented to the Commission upon all the issues involved. The conditions prevailing at Bowling Green, as also those at Nashville and Clarksville, were elaborately described by witnesses called by the Protective Association of Bowling Green and the Railroad Company. The Railroad Company sought, for example, to show that the rates at Nashville were fixed by both rail and water competition; and that while the rail rates to and from Bowling Green were higher than those prevailing between Louisville and Nashville over the same road, and in either direction, the intermediate rates were reasonable and that *ni* evidence was offered to the contrary. This latter feature was met, however, by testimony and correspondence which tend to show that the railroad company controlled the Bowling Green river rates as well as its own rates. *Interstate Com.* v. *Louisville &c., R. R.*, 190 U. S. 273–283. Again, the competitive conditions, as claimed by the Railroad Company to exist at Nashville, were met by evidence tending to show that the rail competition at that point was negligible; that the competition afforded by the Cumberland River was potential rather than actual; and that the

> Barren and Green Rivers, if their navigation were not interfered with by the plaintiff, would furnish better and more continuous facilities for navigation than the Cumberland, and would place Bowling Green in substantially the same situation as that of either Nashville or Clarksville. The evidence was exhaustively considered in the report of the Commission, and it would serve no useful purpose to repeat what was shown there. It is sufficient to say that the evidence was conflicting, and that we should not be warranted in disturbing the conclusions of fact reached by the Commission.

(*b*) The order, being based upon substantial evidence, is conclusive.

There being substantial evidence to support the order, "the expediency or wisdom of the order, or whether on like testimony it [the court] would have made a similar ruling" will not be considered. *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 547; *The Minnesota Rate Cases*, 230 U. S. 352, 419, 420; *Illinois Central R. Co.* v. *Int. Com. Com.*, 206 U. S. 441; *Procter & Gamble* v. *United States*, 225 U. S. 282, 297, 298; *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 444; *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 232 U. S. 199, 221; *United States* v. *Louisville & N. R. Co.*, 235 U. S. 314, 320; *United States* v. *Merchants, etc., Ass'n*, 242 U. S. 178, 189.

VI.

THE ORDER DOES NOT DEPRIVE APPELLANT OF PROPERTY WITHOUT DUE PROCESS OF LAW OR VIOLATE THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The particular grounds of objection under this head urged by appellant in the district court are stated in the opinion of that court. (Record, p. 18.) The court says "We can not see that the constitutional provision referred to has a very acute bearing upon the case."

There is no claim made that appellant did not have due notice or that there was not a full hearing given to appellant upon its fourth section application in so far as the rates to and from Bowling Green are concerned. This procedure having been authorized by Congress, it constitutes due process of law. *Hurtado* v. *California*, 110 U. S. 516, 527, 535; *Twining* v. *New Jersey*, 211 U. S. 78, 101.

The administration of the fourth section, as amended, in so far as it limits the power of the carrier to fix rates, has received consideration by this Court and has been declared constitutional. *Intermountain Rate Cases*, 234 U. S. 476, 486; *Louisville & N. R. Co.* v. *Kentucky*, 183 U. S. 503, 510.

There is no foundation for any claim that the order is confiscatory. It does not fix any rates for which any services are to be performed. It simply determines that appellant may not charge less for the longer than for the shorter haul over the same route in the same direction for like

traffic. If the rates to the more distant points are remunerative, as claimed by appellant, then the rates to the intermediate points are certainly remunerative. If the rates for the longer haul are not compensatory it is the fault of appellant in initiating these rates; it is not the result of the order. Appellant may initiate rates which are reasonable and compensatory. *Interstate Commerce Commission* v. *Louisville & N. R. Co.*, 227 U. S. 88, 92; *The Minnesota Rate Cases*, 230 U. S. 352, 433, 434. We submit, therefore, that the order does not violate any constitutional rights of appellant.

VII.

THE DISTRICT COURT BELOW DID NOT ERR IN EXCLUDING EVIDENCE OFFERED BY APPELLANT.

Upon the hearing in the Commerce Court the appellant offered a transcript of the evidence taken before the Commission in the Bowling Green case No. 4310. (Record, p. 602.) Appellant produced A. R. Smith, third vice-president of the Louisville & Nashville Railroad Company, as a witness, stating "his testimony will be a condensation of that which was presented before the Commission." The Commission objected to the taking of this testimony, to which the court, speaking through Judge Knapp, said: "We will take that testimony, subject to objection, reserving the question of its admissibility and relevancy." (Record, p. 602.) As already stated, the Commerce Court decided that the order in question was a negative order and therefore dismissed the petition, without passing upon the

Commission's objection to this testimony. After the case had been reversed upon the authority of the *Intermountain Rates Cases* that the order was not a negative order, and the case remanded to the District Court of the United States for the Western District of Kentucky, the admissibility or relevancy of this testimony came up for determination.

Appellant offered an affidavit of C. B. Compton, filed with the Commerce Court while the case was pending there on an application for preliminary injunction. (Record, p. 616.)

Appellant offered a certified copy of the transcript of the stenographer's notes of the testimony taken and exhibits filed in No. 4310, April 14, 1914, including certain parts of Fourth Section Applications Nos. 1601 and 1604, filed by C. E. Fulton, agent. (Record, p. 618 *et seq.*)

The question involved in fourth section applications are (1) the reasonableness of the rate *per se* to and from the intermediate point; (2) whether the competition or circumstances at the more distant point as compared with the competition and conditions at the intermediate point, justify relief from the provisions of the fourth section; and (3) if such relief is justified, the extent to which it may be allowed. *Intermountain Rate Cases*, 234 U. S. 476; *United States* v. *Merchants, etc., Ass'n*, 242 U. S. 178. The Commission having passed upon these questions upon a record made before it, the validity or invalidity of the order must be determined by that record.

This Court has recognized in many decided cases that all questions of fact are to be determined by the Commission and that the court can only determine whether the Constitution has been violated, statutory powers transcended, or whether those powers have been exercised in such an arbitrary way as to be unauthorized. The proposition that the trial court may take additional testimony and make a different record from that before the Commission implies a power in the court to determine questions of fact upon the new record. This is clearly against the decisions of this Court, which hold that the findings of fact by the Commission are conclusive. Congress has anticipated every conceivable case in which additional evidence might arise and has provided for a rehearing before the Commission. Section 16a of the Act to regulate commerce provides that the Commission may grant rehearings "after a decision, order, or requirement has been made by the Commission in any proceeding," and that "the Commission may reverse, change, or modify the same accordingly." If, therefore, experience in compliance with an order develops new and important evidence affecting the operation of the order, it is the duty of the carrier under the act of Congress to first take the evidence before the Commission in order that the Commission may pass upon the questions of fact involved. We can conceive of no case under the clear rulings of this Court where the trial court may undertake to receive evidence and pass upon questions of fact

in these matters. It is both a privilege and a duty of the carrier to submit to the administrative tribunal all questions of fact affecting regulation of the carrier. After this has been done and an order entered, the orders may be reviewed by the court upon the record made before the Commission to determine whether constitutional rights, the requirements of statutory procedure, and proper exercise of discretion have been observed. We therefore submit that the evidence offered by appellant in the court below in the first instance was not admissible.

It is manifest, if the testimony of Compton were admissible at all, that it would be necessary to present the witness in open court so that he might be cross-examined. The same is true of the offer of transcripts of certain testimony and of parts of applications in other proceedings before the Commission. As to this testimony the district court said, 225 Fed. 571, 584 (Record, p. 19):

> Nor can we discern any reason why testimony taken in another case (long after that case was separated from this one, if indeed it ever had any connection with this particular litigation) can be admissible in this case without the consent of defendants, in view of the fact that it was entirely possible for the persons who testified in the other case to be produced as witnesses here. These reasons apply also to plaintiff's offer to read as testimony parts of the two fourth section applications filed by Fulton, as agent for certain carriers.

CONCLUSION.

Appellant's application for relief from the long-and-short-haul clause of the fourth section was addressed to the sound discretion of the Commission. In the exercise of this discretion, it was the Commission's duty to consider both public and private interests, and upon the record before it to determine all questions of fact. The burden was upon appellant to show that there was a "special case" or particular circumstances and conditions which, as a matter of justice and right, entitled appellant to charge lower rates to Clarksville and Nashville than to Bowling Green. In granting or refusing relief, under the fourth section, there is nothing in the Act to justify limiting the power of the Commission to either a grant or a denial *in toto* of the precise relief applied for.

The Commission proceeded in strict accordance with the act of Congress; a full hearing was accorded to and availed of by appellant; no constitutional rights could be invaded, for the reason that the order does not fix any rate for which a service is to be performed; and the admitted facts and the evidence taken are of such character as to conclusively show that the action of the Commission was not arbitrary, but that the power of the Commission was exercised fairly within "the limits of a sound discretion."

We respectfully submit that the decree of the district court should be affirmed.

JOSEPH W. FOLK,
Counsel for the Interstate Commerce Commission.

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SUBJECT INDEX.

PAGES

A. THE IMMATERIAL CONTENTIONS RAISED ON BEHALF OF THE COMMISSION 2

1. The Jurisdiction of the Commission to Prescribe the Extent to which Carriers may be Relieved from the Operation of the Fourth Section 2

2. The Commission has Power to Dispose of a Part of an Application for Relief from the Fourth Section without Disposing of the Entire Application 4

3. Exclusion of Evidence by the Lower Court 5

B. DISCUSSION OF STATEMENTS AND ARGUMENTS ON BEHALF OF THE COMMISSION WHICH BEAR MORE OR LESS DIRECTLY UPON SOME OF APPELLANT'S MATERIAL CONTENTIONS 5

1. The Commission's Contention that the Order Complained of is a Denial of Relief Under the Fourth Section 5

2. The Commission's Contention that its Order is not Based upon the Theory of Estoppel 6

3. The Evidence in Support of the Commission's Order 6

4. Violation of the Fifth Amendment 8

C. POINTS ENTIRELY IGNORED BY COUNSEL FOR THE COMMISSION 8

POINTS 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 91.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, - - - - - - - - - *Appellant,*

versus

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, - - *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

REPLY BRIEF.

The brief on behalf of the Interstate Commerce Commission does not attempt, except in small part, to meet the points upon which we have based our appeal but devotes considerable effort to the discussion of issues which we have not in anywise raised or which we have expressly declared to be immaterial to our contentions.

In order to avoid distracting the attention of the court from matters of substantial contentions we

shall merely mention those statements and arguments on behalf of the Commission which we deem to be immaterial; we shall further discuss those points which the brief for the Commission even remotely touches upon and we shall respectfully refer the court to our original brief without further discussion of those points which counsel for the Commission has ignored. This reply, therefore, falls logically into three subdivisions, concerning—

A. The arguments and statements on behalf of the Commission upon immaterial points,

B. The arguments on behalf of the Commission bearing more or less directly on some of our material contentions, and

C. The arguments and facts presented on behalf of appellant which appellees have completely ignored.

A. THE IMMATERIAL CONTENTIONS RAISED ON BEHALF OF THE COMMISSION.

1. The Jurisdiction of the Commission to Prescribe the Extent to which Carriers may be Relieved from the Operation of the Fourth Section.

The first argument made on behalf of the Commission is that "the Commission had jurisdiction to prescribe the extent to which carriers might be relieved from the operation of the Fourth Section." We have made no contention to the contrary, but have, in fact, stated that the Commission had such power *but did not exercise that power*. Relief was

asked for in the special case of Nashville, Tenn., and in the special case of Bowling Green, Ky. (in each case with respect to intermediate points—the letter of the statute being so violated in each case). A part of the special case of Nashville (that with respect to business through Louisville) was heard. The special case of Bowling Green, Ky., has never been heard. The order complained of, which was made after hearing in part the special case of Nashville, does not deny the application in that case, does not grant the application in that case and *does not prescribe the extent* to which relief may be had in that case. The violation of the statute in each of the special cases of Nashville and of Bowling Green is possible under the terms of the order to the full extent to which the violation existed before, but the Commission has prescribed not an *extent to which,* but a *condition upon which* relief will be granted. That is to say, the statute in the special case of Nashville may be violated with respect *to all other intermediate points upon condition* that a discrimination against Bowling Green (under the third section which, if unjust, the Commission had power to remedy in a proper case by an order extending for two years) is wiped out in perpetuity even if the *extent* of the discrimination against intermediate points in the special case of Bowling Green is thereby increased.

2. The Commission has Power to Dispose of a Part of an Application for Relief from the Fourth Section without Disposing of the Entire Application.

Counsel for the Commission is mistaken when he states in his argument under the above caption that "it is contended that the Commission had no power to grant relief as to part of the application without granting relief as to all the points named in the application." No such contention will be found in our brief, and it is, therefore, unnecessary to discuss this question further.

Near the latter part of the argument of counsel for the Commission, under the same caption (Commission's brief, page 16)—although not related to the proposition indicated, counsel for the Commission says that it is somewhat difficult to understand appellant's contention that the order goes beyond the issues or the evidence. We have referred in our original brief to the record showing wherein our contention is true (Tr., 174-175, 611-612). It should not be difficult for counsel to understand, for example, that the order complained of applies to coal from mines in Eastern Kentucky and in Eastern Tennessee to Nashville which passes through Lebanon Junction, Ky., and *does not pass through Louisville, Ky.*, and that this traffic was neither in issue nor in hearing.

3. Exclusion of Evidence by the Lower Court.

As we pointed out in our original brief our case does not depend upon our exception to the exclusion of evidence by the lower court even though the Commission having refused us a rehearing can not consistently now be permitted to say that such evidence should have been presented to it and not to the court.

B. DISCUSSION OF STATEMENTS AND ARGUMENTS ON BEHALF OF THE COMMISSION WHICH BEAR MORE OR LESS DIRECTLY UPON SOME OF APPELLANT'S MATERIAL CONTENTIONS.

1. The Commission's Contention that the Order Complained of is a Denial of Relief Under the Fourth Section.

The Commission's argument (No. III) that the order complained of is a denial of relief under the Fourth Section amounts in substance to the proposition that the two-year limitation placed by law upon the orders of the Commission is null and void, provided the Commission sees fit to cast its mandate in the form of Fourth Section orders. We have shown, in our original brief and herein, *supra,* that the order complained of is not a denial of our Fourth Section application.

2. The Commission's Contention that its Order is not Based upon the Theory of Estoppel.

Inasmuch as this is an appeal from the decree of the District Court the Commission adds no force to its argument (No. IV) by quoting the failure of the learned judges of that court to find wherein our assertions are well founded. We have pointed out in our original brief herein where and how the Commission applied the theory of estoppel. In short, the record does not show, it is not a fact, and the Commission could not find that competition in the Green and Barren rivers is now, *or ever was,* controlling beyond the point to which it has been met by appellant's rates and the Commission in plain language holds that appellant is *estopped* to set up this fact.

3. The Evidence in Support of the Commission's Order.

In all of the fourteen pages (19 to 32, both inclusive) devoted by counsel for the Commission to his proposition No. V, that "the order is supported by substantial evidence," not one *scintilla* of fact or testimony is mentioned which is not covered in our original brief. Upon our appeal from the District Court, extensive quotations from that court's opinion can be of no avail, and the testimony of Messrs. Sumpter, Cristal, Duncan, Hindes, Garham, Davidson, Crump, Smith and E. A. Greer, referred to by

counsel, affords ample excuse for his failure to point out wherein in any particular all or anything that they said supports the Commission's order. The gentlemen who testified for the Bowling Green Business Men's Protective Association naturally expressed a desire for the lower rates enjoyed by Nashville and the belief that with such lower rates they could extend their business. The tendency of the testimony might be such as to show material discrimination, the tariffs themselves showed that, but as to the reasons or justification for such discrimination not one word of testimony did they give for the very apparent reason that they were unable to give such testimony. Assuming that the lawful testimony which was given by these witnesses, as to the navigation of the Green and Barren rivers, was relevant, it was favorable to the appellant's contentions, because it showed that, in spite of hundreds of thousands (even millions) of dollars spent by State and Nation upon the Green and Barren rivers, navigation on those streams, although a theoretical possibility, had never been a practical success, and even with a free river and a free wharf the merchants could not afford a $10,000.00 investment in a boat (about 1/10 of the annual interest charge at 5% on the Government's investment) although, if their contentions as to the navigation of the river were correct, it would pay to put such a boat in to keep down rates, even if it were kept tied to the banks. And the testimony of these witnesses further showed that far from be-

ing controlled or made by the L. & N. R. R. Co., the present rates of the Packet Company were the rates of the Steamer Sun, which had been put in the river by the Bowling Green merchants for the purpose of bringing down rates, and that the only substantial and permanent effect on the rates by the boat line by way of reductions in their knowledge had been effected after this time when the L. & N. was alleged to have obtained control of the free government locked and operated streams.

4. Violation of the Fifth Amendment.

Counsel for the Commission is mistaken in his statement that there is no claim that a full hearing was not had in the matters covered by the order. We have distinctly set forth in our original brief, as well as herein, where the order was broader than the hearing. Counsel does not otherwise reply to our argument in this regard.

C. POINTS ENTIRELY IGNORED BY COUNSEL FOR THE COMMISSION.

The brief on behalf of the Commission ignores or only partially touches upon the points of our argument which are as follows:

POINTS.

I.

The order complained of is not such a negative order or order of denial as is contemplated by the Fourth Section of the Act to Regulate Commerce and the Commission was without power to make the order either under that section or under any other law.

(a) The order is not a negative order.

(b) The order is not responsive to petitioner's Fourth Section Application No. 1952, but is responsive solely to the complaint of discrimination under the Third Section of the Act in Docket No. 4310.

(c) The effect of the order complained of is to require the reasonable rates to and from Bowling Green to be reduced and to increase the violation of the literal provisions of the long and short-haul clause, and these things the Commission is without power to effect.

(d) The Commission's order is broader than the hearings held in connection therewith, and hence deprives petitioner of its property without due process of law.

II.

Even if the order complained of is a negative order or an order of denial such as is contemplated by the Fourth Section of the Act to Regulate Commerce, the order is void because it is contrary to the indisputable nature of the evidence and is not supported by any evidence and is arbitrary, and the Commission

erred as a matter of law in making the order upon the evidence before it.

(a) The uncontroverted facts of record show that the differences in the circumstances and conditions affecting the transportation of property, to, from and through Louisville, Ky., and Nashville, Tenn., as compared with the circumstances and conditions affecting the transportation of property to and from Bowling Green, Ky., are such as to justify discrimination either under the Third Section or under the Fourth Section of the Act to Regulate Commerce.

(b) The power of the Commission to pass upon applications for relief filed under the Fourth Section of the Act to Regulate Commerce as amended, is subject to the right of the carriers to meet competition and to charge reasonable rates, and is limited by the settled construction of the Act by this court, and particularly by the construction of the First, Third and Fourth Sections of the Act.

(c) The rates to and from Bowling Green are not and are not shown to be unjust or unreasonable in and of themselves or otherwise in violation of Section One of the Act to Regulate Commerce, and the Commission in denying relief in respect to the Nashville rates, notwithstanding the intermediate Bowling Green rates are just and reasonable in and of themselves, exceeded the limitations fixed by law on the exercise of its powers under the Fourth Section.

(d) The acceptance of lower rates to and from Nashville than the rates in effect to and from intermedate points by the Louisville & Nashville Railroad was not and is not voluntary, but is the necessary result of actual compelling competition at Nashville.

(e) The Third Section of the Act to Regulate Commerce prohibits only such preferences as are unjust or unreasonable, and as a general rule those facts and matters which carriers, apart from any question arising under the Act, would treat as calling, in a given case, for a preference or advantage, are facts and matters which the Commission should consider in forming its judgment whether such preference or advantage is undue or unreasonable within the meaning of the Act.

(f) It having been established, as it was in the case at bar, that lower rates to one point, such as Nashville, than are in effect to another, are due to competition which is real, substantial and compelling, then the preference so arising or produced can not be held in legal effect to be an undue or unjust prejudice under either the Third or Fourth Sections of the Act to Regulate Commerce, and the Commission's conclusion that Nashville was given an undue preference and Bowling Green subjected to an unjust disadvantage was not warranted or sustained by any evidence, and the Commission erred as a matter of law in this regard.

(g) The Commission's findings with respect to the force and effect of railroad competition at Nashville are contrary to the indisputable nature of the evidence.

(h) The order complained of places upon petitioner the burden of either inducing other railroads at Nashville to advance their rates to and from Nashville or reducing its own reasonable Bowling Green rates, and in this respect is unjust, unlawful and oppressive.

(i) Neither the common law nor the Act to Regulate Commerce requires equality of charge, except where the services are similar.

(j) The uncontradicted testimony shows that water competition at Nashville was in the past and still is actual, active, and controlling upon the adjustment of rates to, from and through that point, and the Commission finds and reports this to be a fact.

(k) The Commission's finding, with respect to water competition at Bowling Green, is not supported by any evidence.

(l) The Commission's findings, with respect to an alleged community of interest and control between the boat line and the railroad at Bowling Green are not sustained by any evidence.

(m) Even if a control or community of interest between petitioner and the Packet Company at Bowling Green did exist, such fact would not operate to render the acceptance by petitioner of lower rates to Nashville than to Bowling Green, in order to meet competition at Nashville an undue or unlawful preference to Nashville in violation of either the Third or the Fourth Sections of the Act to Regulate Commerce, and the Commission erred as a matter of law in holding that it does.

(n) The denial of relief in respect to rates on oranges from Jacksonville to Louisville was likewise unlawful and should be corrected.

(o) The order of the Commission is based exclusively upon the theory of estoppel, which theory the Commission is without power to consider or enforce.

And for a discussion of these, we respectfully refer to our original brief (34-89) and confidently submit our case.

Respectfully submitted,

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Louisville, Ky., November 28, 1917.